

## **LONG-TERM INSURANCE ACT**

**NO. 52 OF 1998**

**DATE OF COMMENCEMENT: 1 JANUARY, 1999**

### **ACT**

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

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## **INTRODUCTORY PROVISIONS**

### **1. Definitions.**

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

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

“assistance policy” means a life policy in respect of which the aggregate of—

(a) the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the long-term insurer); and

(b) the amount of the premium in return for which an annuity is to be provided,

does not exceed R10 000, or another maximum amount prescribed by the Minister; and includes a re-insurance policy in respect of such a policy;

“auditor” means an auditor registered in terms of the Public Accountants’ and Auditors’ Act, 1991 (Act No. 80 of 1991), and appointed in terms of section 19 (1) or 21 (1) (a) of this Act;

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

“capital adequacy requirement” means an amount which a long-term insurer is required to have in terms of paragraph 2 of Schedule 3;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

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

“Court” means the High Court of South Africa;

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

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

“disability policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a disability event; and includes a re-insurance policy in respect of such a contract;

“fair value” means the fair value of an asset determined by reference to South African Statements of Generally Accepted Accounting Practice;

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

“fund” means—

- (a) a friendly society as defined in section 1 of the Friendly Societies Act, 1956 (Act No. 25 of 1956);
- (b) a pension fund organization as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956);
- (c) a medical scheme as defined in section 1 of the Medical Schemes Act, 1967 (Act No. 72 of 1967);
- (d) a permanent fund, established bona fide for the purpose of providing benefits to members in the event of sickness, accident or unemployment, or of providing benefits to surviving spouses, children, dependants or nominees of deceased members, or mainly for those purposes; and
- (e) any other person, arrangement or business prescribed by the Registrar;

“fund policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a re-insurance policy in respect of such a contract;

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

“health policy” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits upon a health event, but excluding any contract—

- (a) 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

(b)

(i) of which the policy-holder is a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967);

(ii) which relates to a particular member of the scheme or to the beneficiaries of such member; and

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

and includes a re-insurance policy in respect of such a contract;

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

“life event” means the event of the life of a person or an unborn—

- (a) having begun;
- (b) continuing;
- (c) having continued for a period; or
- (d) having ended;

“life insured” means the person or unborn to whose life, or to the functional ability or health of whose mind or body, a long-term policy relates;

“life policy” means a contract in terms of which a person, in return for a premium, undertakes to—

- (a) provide policy benefits upon, and exclusively as a result of, a life event; or
- (b) pay an annuity for a period;

and includes a re-insurance policy in respect of such a contract;

“linked liabilities” means the liabilities of a long-term insurer in respect of linked policies;

“linked policy” means a long-term policy of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined solely by reference to the value of particular assets or categories of assets which are specified in the policy and are actually held by or on behalf of the insurer specifically for the purposes of the policy;

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

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

“long-term policy” means an assistance policy, a disability policy, fund policy, health policy, life policy or sinking fund policy, or a contract comprising a combination of any of those policies; and includes a contract whereby any such contract is varied;

“managing executive” means the chief executive officer of a long-term insurer and every manager of that long-term insurer who reports directly to that chief executive officer;

“market-related policy” means a long-term policy, other than a linked policy, of which the amount of the policy benefits is not guaranteed by the long-term insurer and is to be determined in whole or in part by reference to the value of particular assets or categories of assets;

“Minister” means the Minister of Finance or any other Minister to whom the administration of this Act may be assigned from time to time;

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

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

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

“prescribe” means to determine from time to time by notice in the Gazette;

“public company” means a company with a share capital which is a public company under the Companies Act;

“Registrar” means the Registrar of Long-term Insurance referred to in section 2 (1);

“regulation” means a regulation under section 72;

“re-insurance policy” means a re-insurance policy in respect of a long-term policy;

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

“sinking fund policy” means a contract, other than a life policy, in terms of which a person, in return for a premium, undertakes to provide one or more sums of money, on a fixed or determinable future date, as policy benefits; and includes a re-insurance policy in respect of such a contract;

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

“statutory actuary” means an actuary appointed in accordance with section 20 (1) or 21 (1) (b);

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



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

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

## **PART I**

### **ADMINISTRATION OF ACT**

#### **2. Registrar of Long-term Insurance.**

- (1) There shall be a Registrar of Long-term Insurance with the powers and duties conferred on or assigned to the Registrar by or under this Act or any other law.
- (2) The executive officer of the Board shall be the Registrar.
- (3) The powers and duties of the Registrar may be exercised and shall be carried out—
  - (a) personally by the Registrar;
  - (b) by another member of the executive of the Board authorised thereto by the Registrar or, in the Registrar’s absence for any reason, the Board; or
  - (c) by any person who has been appointed by the Board for that purpose and who has been authorised to do so under his or her control by the Registrar, or by the member referred to in paragraph (b), to the extent and subject to the conditions determined, either generally or in any particular case, in that authorisation.
- (4) Any decision or action taken by a person referred to in subsection (3) (b) or (c) in the exercise of any power or carrying out of any duty of the Registrar shall, for the purposes of this Act or any other law, be deemed to have been taken by the Registrar.

#### **3. General provisions concerning Registrar.**

- (1) An approval of, or a determination or decision by, or a notice to be given by or to, the Registrar, shall, without derogating from legal rules on the making known or the publication thereof, be valid only if it is in writing.
- (2) Whenever the approval of, or a determination or decision by, or the performance of any other act by the Registrar, is sought by a person under this Act or any other law, application therefor shall be made in writing to the Registrar and the application shall—
  - (a) be made in the form the Registrar requires; and
  - (b) be accompanied by—
    - (i) the fees prescribed by the Registrar; and
    - (ii) the information or documents which the Registrar requires.

- (3) If a person with an interest in the matter is aggrieved by a determination made, decision taken or act performed in the exercise or carrying out of the powers or duties of the Registrar, that person may appeal to the board of appeal established by section 26 of the Financial Services Board Act, with the necessary changes, in accordance with that section.
- (4) A person may, upon payment of the fees prescribed by the Registrar, inspect only those documents prescribed by the Registrar, after consultation with the Advisory Committee, which are held by the Registrar under this Act in relation to a long-term insurer or obtain a copy of or extract from any such document.
- (5) A document which purports to have been certified by the Registrar as a document held in the Registrar's office or to be a copy of such a document, shall be prima facie proof of the content of such a document or copy, and shall be admissible in evidence in any proceedings.

**4. Special provisions concerning Registrar and his or her powers.**

- (1) When anything is required or permitted to be done under this Act within a particular period, the Registrar may, before the expiry of that period, extend it.
- (2) The Registrar may by notice direct a long-term insurer to furnish the Registrar, within a specified period, with specified information or documents required by the Registrar for the purposes of this Act.
- (3)
  - (a) If any advertisement, brochure or similar communication which relates to the business of a long-term insurer, or to a long-term policy, and which is being, or is to be, published or issued by a person, is misleading or contrary to the public interest or contains an incorrect statement of fact, the Registrar may by notice direct that person not to publish or issue it or to cease publishing or issuing it or to effect the changes to it which the Registrar deems fit.
  - (b) An advertisement, brochure or similar communication which relates to a long-term policy must include the name of the long-term insurer underwriting the long-term policy.
- (4) If the Registrar has reason to believe that a person is contravening or failing to comply with a provision of this Act, the Registrar may by notice direct that person or any other person to—
  - (a) furnish the Registrar within a specified period with any specified information or documents in the possession or under the control of that person which relate to the matter;
  - (b) appear before the Registrar at a specified time and place in connection with the matter.

(5)

(a) If a person contravened or is contravening section 7 (1) (a) of this Act, the Registrar may—

(i) by notice direct that person to make arrangements satisfactory to the Registrar to discharge all or any part of the obligations under long-term policies already entered into by that person; or

(ii) apply to the Court for the sequestration or liquidation of that person, whether he, she or it is solvent or not, in accordance with—

(aa) the Insolvency Act, 1936 (Act No. 24 of 1936);

(bb) the Companies Act;

(cc) the Close Corporations Act, 1984 (Act No. 69 of 1984); or

(dd) the law under which that person is incorporated,

as the case may be.

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

(i) may take into account whether the sequestration or liquidation of the person concerned would be in the interests of the policy-holders concerned;

(ii) may make an order concerning the manner in which claims may be proven by policy-holders; and

(iii) shall (if necessary) appoint as trustee or liquidator a person nominated by the Registrar.

(6) Notwithstanding anything to the contrary in any law or the common law contained, but subject to the provisions thereof relating to jurisdiction, procedure and evidence in relation to a Court, the Registrar shall have a right of appearance to institute and conduct any proceedings in a Court if it is reasonably necessary—

(a) to discharge any duty or responsibility assigned to the Registrar by this Act;

(b) to compel any person to comply with or to cease contravening this Act;

(c) to compel any person to comply with a lawful request, directive or instruction made, issued or given by the Registrar under this Act;

(d) to obtain a declaratory order concerning any point of law relating to this Act or to long-term insurance business generally; or

- (e) in connection with any matter relating to long-term insurance business generally where the Registrar considers it to be in the public interest,

subject to such additional procedural requirements as the Court may order in each case so as to ensure fair and equitable judicial process.

- (7) The Registrar may—
  - (a) determine that a policy or policies shall form part of a particular class of policies defined in section 1 of this Act or in section 1 of the Short-term Insurance Act, 1998, if a long-term insurer has not classified that policy or policies correctly into the appropriate class, and when the Registrar so determines, the policy or policies concerned shall be deemed to form part of the class of policies so determined for the purposes of, and subject to, the provisions of the said Act relating to that class of policies; or
  - (b) upon application of a long-term insurer, determine that a policy or policies forming part of any class of policies defined in section 1 of this Act or in section 1 of the Short-term Insurance Act, 1998, shall form part of a different class of policies defined in the said section 1 of this Act, and when the Registrar so determines, that policy or policies shall for the purposes of this Act be deemed to form part of the class of policies so determined and it or they shall—
    - (i) be subject to all the provisions of this Act relating to that class of policies;
    - (ii) be subject to the conditions determined by the Registrar; and
    - (iii) notwithstanding paragraph (a), be exempted from the provisions of the regulations to the extent determined by the Registrar:

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

## **5. Annual report**

- (1) The Registrar shall submit to the Minister a report on the Registrar's activities under this Act during each year ending 31 December, and shall furnish any additional information relating to anything done by the Registrar under this Act that the Minister may require.
- (2) A copy of the report submitted to the Minister in terms of subsection (1) shall be tabled in Parliament within 30 days after receipt of the report if Parliament is then in session or, if Parliament is not then in session, within 30 days after the commencement of its next ensuing session.

**6. Advisory Committee on Long-term Insurance.**

- (1) There shall be an Advisory Committee on Long-term Insurance which may on its own initiative, or shall at the request of the Minister or Registrar, investigate and report or advise concerning any matter relating to long-term insurance.
- (2) The Advisory Committee shall consist of a chairperson and other members, appointed by the Minister after consultation with the Board.
- (3) A member of the Advisory Committee shall hold office for the period determined by the Minister when the appointment is made.
- (4) A member of the Advisory Committee who is not in the full-time employment of the State or the Board shall be paid the remuneration and allowances in respect of any expenses incurred in the performance of the functions of the Advisory Committee determined by the Board.
- (5) The Advisory Committee may meet or otherwise arrange for the performance of its functions, and may regulate its meetings as it thinks fit, after consultation with the Board.
- (6) The expenditure connected with the functions of the Advisory Committee shall be paid out of the funds of the Board, whose approval shall be required for all expenditure proposed to be incurred, or actually incurred, by the Advisory Committee.
- (7) The Advisory Committee shall have the powers and carry out the duties conferred on or assigned to it by or under this Act.

**PART II**

**REGISTRATION OF LONG-TERM INSURERS**

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

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

(a) is registered or deemed to be registered as a long-term insurer, and is authorised to carry on the kind of long-term insurance business concerned, under this Act; and

(b) carries on that business in accordance with this Act.

(2) Subsection (1) shall not apply to—

(a) a pension fund organization registered under the Pension Funds Act, 1956 (Act No. 24 of 1956), if and in so far as it acts in accordance with that Act;

(b) a friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956), or exempted under section 3 (2) of that Act from the requirement to be so registered, if and in so far as it enters into long-term policies in respect of any of which—

- (i) the value of the policy benefits, other than an annuity, to be provided; or
- (ii) the amount of the premium in return for which an annuity is to be provided,
  - does not exceed R5 000 per member or another maximum amount prescribed by the Minister;
- (c) a fund established in terms of an agreement referred to in section 23 of the Labour Relations Act, 1995 (Act No. 66 of 1995), if and in so far as it acts in accordance with the provisions of such agreement;
- (d) a medical scheme registered under the Medical Schemes Act, 1967 (Act No. 72 of 1967), if and in so far as it acts in accordance with that Act;
- (e) the Land and Agricultural Bank of South Africa referred to in section 3 of the Land Bank Act, 1944 (Act No. 13 of 1944), if and in so far as it acts in accordance with that Act;
- (f) a short-term insurer, if and in so far as it enters into a policy which it is entitled to enter into by virtue of its registration as a short-term insurer; or
- (g) an agricultural co-operative or special farmers' co-operative formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), if and in so far as it provides, under a scheme or arrangement in terms of its statutes, benefits the amount of which is not guaranteed and in respect of which its liability is limited to the amount standing to the credit of a fund specially maintained for that purpose.

(3) For the purposes of this section a person shall, in the absence of evidence to the contrary, be deemed to be carrying on long-term insurance business in the Republic, if that person performs any act in the Republic—

- (a) the object or result of which is that another person will enter into or enters into, or offers to enter into or to vary, a long-term policy, other than a re-insurance policy, in terms of which the first-mentioned person undertakes to provide policy benefits to the other person; or
- (b) in relation to a long-term policy, other than a re-insurance policy, in terms of which that person has undertaken to provide policy benefits, and which act is aimed at—
  - (i) maintaining, servicing or surrendering, or otherwise dealing with, the long-term policy;
  - (ii) collecting or accounting for premiums payable under the long-term policy; or
  - (iii) receiving or submitting of, or assisting or otherwise dealing with the settlement of, a claim under the long-term policy.

8. Prohibition on use of certain words, or performance of certain acts, by certain persons.—(1) No person shall—

(a) subject to section 8 (1) (a) of the Short-term Insurance Act, 1998, without the approval of the Registrar apply to his, her or its business or undertaking a name or description which includes the word "insure", "assure" or "underwrite" or any derivative thereof, unless he, she or it is a long-term insurer; or

(b) perform any act which indicates that he, she or it carries on or is authorised to carry on long-term insurance business, unless he, she or it is a long-term insurer authorised to carry on that business.

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

[Sub-s. (2) substituted by s. 4 of Act No. 17 of 2003.]

#### Wording of Sections

(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 re-insurance 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 re-insurance 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.

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

(2) Subject to subsection (3), the Registrar—

(a) may grant an application made in terms of subsection (1) on such of the conditions contemplated in section 10 as the Registrar may determine; and

(b) shall, if the Registrar grants such application, register the person concerned as a long-term insurer and issue to that person a certificate of registration, in such form as may be prescribed by the Registrar, authorising that person to carry on the long-term insurance business concerned and specifying the conditions contemplated in paragraph (a).

(3) An application referred to in subsection (1) shall not be granted by the Registrar—

(a) unless the applicant—

(i) is a public company and has the carrying on of long-term insurance business as its main object; or

(ii) is incorporated without a share capital under a law providing specifically for the constitution of a person to carry on long-term insurance business as its main object;

(b) if—

(i) the applicant does not have the financial resources, organisation or management that is necessary and adequate for the carrying on of the business concerned;

(ii) any person who is, or will, from the date of proposed registration, be a director or managing executive of the applicant is not fit and proper to hold the office concerned;

(iii) the direct or indirect control of the applicant by another person, whether by virtue of shareholding, voting power, the power to appoint directors, or in any other manner, will be contrary to the interests of policy-holders;

(iv) the applicant is not, or will not be, able to comply with this Act; or

(v) the registration is contrary to the public interest;

(c) if the proposed name of the applicant, or a translation, shortened form or derivative thereof, is unacceptable because it—

(i) is identical to that of another long-term insurer or a short-term insurer;

(ii) so closely resembles that of another long-term insurer or a short-term insurer that the one is likely to be mistaken for the other;

(iii) is identical to that under which another long-term insurer or a short-term insurer was previously registered and reasonable grounds exist for objection to its use by the applicant concerned; or

(iv) is misleading or undesirable,

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

10. Conditions of registration.—The conditions contemplated in section 9 (2) (a) may include conditions—

(a) authorising the long-term insurer to enter into only certain long-term policies determined by the Registrar;

(b) authorising the long-term insurer to enter into long-term policies other than certain long-term policies determined by the Registrar;

(c) authorising the long-term insurer to enter into certain long-term policies determined by the Registrar only if those policies contain, or do not contain, particular terms or conditions determined by the Registrar;



(d) limiting the amount or value of the policy benefits to be provided by the long-term insurer under certain long-term policies determined by the Registrar to an amount or value determined by the Registrar;

(e) limiting the amount of the premiums that the long-term insurer may contract to receive, during a period determined by the Registrar, in respect of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during that period;

(f) requiring the long-term insurer to enter into re-insurance policies in terms of which that long-term insurer reinsures at least a portion determined by the Registrar of the liabilities incurred by it in terms of all or certain long-term policies determined by the Registrar that may be entered into by that long-term insurer during a period determined by the Registrar;

(g) requiring that the provisions of the memorandum and articles of association, or equivalent constitution, of the long-term insurer must be suitable to enable it to carry on long-term insurance business; or

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

[Para. (h) substituted by s. 5 of Act No. 17 of 2003.]

#### Wording of Sections

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

11. Variation of registration conditions.—(1) The Registrar may—

(a) upon application of a long-term insurer and having regard, with the necessary changes, to section 9 (3) (b);

(b) when acting in accordance with section 12 (2) or (3) or when giving an authorisation in accordance with section 35 (2) (a) in relation to a long-term insurer; or

(c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter,

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

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

12. Registrar may under certain circumstances prohibit long-term insurers from carrying on business.—(1) If a long-term insurer—

(a) has not furnished all information which is material to an application made to the Registrar under this Act or has furnished information which is false;

(b) (i) has made a material misrepresentation to members of the public in connection with the long-term insurance business carried on by it;

(ii) has failed to comply with a material condition subject to which it is registered or deemed to be registered as a long-term insurer;

(iii) has contravened or failed to comply with a material provision of this Act,

and has thereafter, within a period determined by the Registrar, failed to remedy such conduct to the satisfaction of the Registrar; or

(c) were it then to apply for registration in terms of section 9, would not be able to satisfy the Registrar as to the matters referred to in section 9 (3) (b) (i), (iii) or (iv),

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

(2) When the Registrar has given notice to a long-term insurer in accordance with subsection (1), and has allowed that insurer at least 30 days in which to make representations to the Registrar in respect of the matter, the Registrar may, by notice to the long-term insurer—

(a) withdraw the first-mentioned notice;

(b) act in accordance with section 11; or

(c) if it is appropriate and if the Minister has authorised the Registrar in writing to do so, prohibit the long-term insurer from carrying on such long-term insurance business as the Registrar may specify in the notice, and which has been specified in the first-mentioned notice.

(3) When the Registrar has, in accordance with subsection (2), prohibited a long-term insurer from carrying on certain long-term insurance business, the Registrar may thereafter—

(a) withdraw the prohibition by notice to the long-term insurer;

(b) act in accordance with section 11 (1) and thereupon, by notice to the long-term insurer, withdraw the prohibition and authorise the long-term insurer to carry on the long-term insurance business, subject to the conditions determined by the Registrar, specified in the new certificate of registration referred to in section 11 (2); or

(c) act in accordance with section 13 (2) (c), 41 (2) or 42 (2), according to whichever provision the Registrar deems most appropriate in the circumstances and in the interests of the policy-holders of the long-term insurer.

13. Termination of registration.—(1) If a long-term insurer fails to commence the carrying on of its long-term insurance business within a reasonable period after being registered to do so, and if, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that the long-term insurer will not commence the carrying on of such business within a reasonable period thereafter, the Registrar shall, by notice to the long-term insurer, cancel its registration.

(2) The Registrar shall—

(a) if a long-term insurer has ceased to enter into long-term policies to an extent which no longer justifies its continued registration as a long-term insurer and, after allowing that insurer at least 30 days in which to make representations in respect of the matter, the Registrar is satisfied that it will not resume the entering into of long-term policies to the required extent within a reasonable period thereafter;

(b) if a long-term insurer has notified the Registrar of its intention to cease to enter into any more long-term policies and has requested so in writing; or

(c) if the Registrar considers it appropriate to act so in accordance with section 12 (3) (c),

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

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

(a) discontinued as a result of its amalgamation with, or its transfer to, another long-term insurer as contemplated in Part V; or

(b) wound up as contemplated in Part VI,

the Registrar shall by notice in the Gazette cancel its registration.

14. Deregistration of long-term insurers as companies.—For the purposes of section 73 (5) of the Companies Act in relation to a long-term insurer, the reference to the Registrar of Companies in that section shall be construed as a reference to the Registrar of Companies acting in concurrence with the Registrar.

### PART III

### BUSINESS AND ADMINISTRATION OF LONG-TERM INSURERS

15. Limitation on business.—(1) A long-term insurer shall not carry on such business, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, as the Registrar has prohibited in relation to—

- (a) a particular long-term insurer; or
- (b) long-term insurers generally.

(2) A long-term insurer shall not carry on such business as the Registrar may determine, other than the long-term insurance business which it is authorised to carry on by virtue of its registration under section 9, otherwise than in accordance with and subject to the limitations and conditions which the Registrar may determine in relation to—

- (a) a particular long-term insurer; or
- (b) long-term insurers generally.

(3) The Registrar may only impose a prohibition or determine a limitation and a condition under subsection (1) or (2) by notice in the Gazette—

- (a) if it is in the interests of the policy-holders of a particular long-term insurer, or long-term insurers in general, to act so;
- (b) after giving at least 30 days' notice of the Registrar's intention to act so in the case of—
  - (i) a particular long-term insurer, to that long-term insurer; or
  - (ii) long-term insurers generally, in the Gazette; and
- (c) after considering any representations received in respect of the matter.

(4) A long-term insurer, other than an insurer carrying on re-insurance business only, shall not be a short-term insurer as defined in the Short-term Insurance Act, 1998.

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

[S. 15A inserted by s. 6 of Act No. 17 of 2003.]

16. Head office and public officer.—(1) A long-term insurer shall—

- (a) have its head office in the Republic;
- (b) appoint a natural person who is permanently resident in the Republic as its public officer;
- (c) notify the Registrar of the address of that head office and of the name of that public officer; and

(d) if the address of that head office changes, or if that public officer or the name of that public officer changes, notify the Registrar thereof within 30 days after such change.

(2) The public officer shall, as far as it is in his or her power, ensure that the long-term insurer complies with this Act.

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

17. Financial year.—A long-term insurer may not change its financial year without the approval of the Registrar.

18. Notification of certain appointments, terminations and resignations.—(1) A long-term insurer shall notify the Registrar, in the form and of the information required by the Registrar, in respect of every director or managing executive appointed by it or whose appointment has been terminated by it, or who has resigned, within 30 days after such appointment or termination or resignation, as the case may be, together with the reasons for any such termination.

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

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

[S. 18 substituted by s. 7 of Act No. 17 of 2003.]

#### Wording of Sections

19. Auditor.—(1) A long-term insurer shall from time to time appoint, and at all times have, one or more auditors.

(2) No appointment of an auditor, other than a re-appointment not involving a break in the continuity of the appointment, shall take effect unless it has been approved by the Registrar.

(3) A long-term insurer shall not appoint as its auditor—

(a) one of its directors; or

(b) a person who is not engaged in public practice as an auditor.

(4) If an auditor of a long-term insurer is a firm (as contemplated in the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991)), the last approval of the Registrar for the appointment thereof shall not lapse by reason of a change in

the membership of the firm if at least half of the members, after the change, were members when the appointment of the firm was last approved by the Registrar.

(5) Notwithstanding anything to the contrary in any law contained, the auditor of a long-term insurer shall—

(a) whenever the auditor furnishes copies of a report or other document or particulars contemplated in section 20 (5) (b) of the Public Accountants' and Auditors' Act, 1991, also furnish a copy thereof to the Registrar; and

(b) if the auditor's appointment is terminated for any reason—

(i) submit to the Registrar a statement of what the auditor believes to be the reasons for that termination; and

(ii) if the auditor would, but for that termination, have had reason to submit to the long-term insurer a report contemplated in section 20 (5) (a) of the Public Accountants' and Auditors' Act, 1991, submit such a report to the Registrar; and

(c) inform the Registrar in writing of any matter relating to the affairs of the long-term insurer of which the auditor became aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, may prejudice the insurer's ability to comply with section 29 (1) of this Act.

(6) (a) The furnishing, in good faith, by an auditor of a report or information in terms of this section shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which the auditor is subject.

(b) The failure, in good faith, by an auditor to furnish a report or information in terms of this section shall not confer upon any person a right of action against the auditor which, but for that failure, that person would not have had.

(7) In addition to the duties assigned to the auditor of a long-term insurer by the Act under which that insurer is incorporated or by the Public Accountants' and Auditors' Act, 1991, the auditor shall—

(a) in relation to a statement forming part of the returns in respect of which the auditor is required to do so in terms of section 36, examine that statement or part thereof and satisfy himself, herself or itself that it is properly drawn up so as to comply with the requirements of this Act and express an opinion as to whether the statement or part thereof, including any annexure thereto, presents fairly the matters dealt with therein as contemplated in section 20 of the Public Accountants' and Auditors' Act, 1991; and

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

(8) Without derogating from an auditor's right to do so in respect of anything which is material to the carrying out of the auditor's duties, an auditor shall not

be required to examine or express an opinion in relation to a statement forming part of a return, report or certificate or to the particulars thereof, in respect of which a statutory actuary is required, in terms of this Act to make an examination, give an attestation or express an opinion.

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

20. Statutory actuary.—(1) A long-term insurer shall from time to time appoint, and at all times have, an actuary.

(2) A long-term insurer may appoint an alternate to act in the place of its statutory actuary during his or her absence for any reason.

(3) No person other than a natural person who is permanently resident in the Republic is a Fellow of the Actuarial Society of South Africa and has, as an actuary, appropriate practical experience relating to long-term insurance business, shall be appointed as a statutory actuary or his or her alternate.

(4) No appointment of a statutory actuary or his or her alternate shall take effect unless it has been approved by the Registrar.

(5) The statutory actuary of a long-term insurer shall—

(a) submit to the Registrar, if his or her appointment is for any reason terminated, a statement of what he or she believes to be the reasons for that termination; and

(b) report to the long-term insurer any matter relating to the business of the long-term insurer of which he or she became aware in the performance of his or her functions as statutory actuary and which, in the opinion of the statutory actuary, may prejudice the long-term insurer's ability to comply with section 29 (1), and if steps to rectify the matter are not taken to the satisfaction of the statutory actuary, he or she shall forthwith report the matter to the Registrar.

(6) (a) The furnishing, in good faith, by a statutory actuary of a report or information in terms of subsection (5) shall not be deemed to constitute a contravention of a provision of a law or a breach of a provision of a code of professional conduct to which he or she is subject.

(b) The failure, in good faith, by a statutory actuary to furnish a report or information in terms of this section shall not confer upon any person a right of action against the statutory actuary which, but for that failure, that person would not have had.

(7) In addition to duties assigned to the statutory actuary by any other law or a code of professional practice, the statutory actuary shall—

(a) in relation to a statement forming part of the returns in respect of which he or she is required to do so in terms of section 36, examine that

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

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

(8) A statutory actuary shall—

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

(b) be entitled to—

(i) attend a general meeting of the long-term insurer;

(ii) receive the notices and other communications relating to a general meeting which a member of that long-term insurer is entitled to receive; and

(iii) be heard at a general meeting on the business of the meeting which concerns him or her as statutory actuary.

21. Appointment of auditor or statutory actuary by Registrar.—(1) If a long-term insurer for any reason fails to appoint—

(a) an auditor in terms of section 19 (1), the Registrar may, notwithstanding sections 269 (4) and 271 (1) of the Companies Act, but subject to section 19 of this Act, appoint an auditor for that long-term insurer;

(b) an actuary in terms of section 20 (1), the Registrar may, subject to section 20, appoint an actuary for that long-term insurer.

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

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

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

(3) When notice has been given to a long-term insurer in terms of subsection (2), that long-term insurer and the person or firm concerned may appeal to the board of appeal established by section 26 of the Financial Services Board Act,



with the necessary changes, in accordance with that section, and any party shall have a right of appeal to the Court against the decision of that board of appeal as if it were a judgment of a lower court.

23. Audit committee.—(1) The board of directors of a long-term insurer shall appoint an audit committee of at least three members of whom at least two shall be members of that board.

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

(3) The functions of an audit committee shall, inter alia, be—

(a) to assist the board of directors in its evaluation of the adequacy and efficiency of the internal control systems, accounting practices, information systems and auditing and actuarial valuation processes applied by the long-term insurer in the day-to-day management of its business;

(b) to facilitate and promote communication and liaison concerning the matters referred to in paragraph (a) or a related matter between the board of directors and the managing executive, auditor, statutory actuary and internal audit staff of the long-term insurer;

(c) to recommend the introduction of measures which the committee believes may enhance the credibility and objectivity of financial statements and reports concerning the business of the long-term insurer; and

(d) to advise on a matter referred to the committee by the board of directors.

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

24. Preference shares, debentures, share capital and share warrants.—A long-term insurer shall not—

(a) without the approval of the Registrar or otherwise than in accordance with the conditions that the Registrar determines—

(i) issue any debentures;

(ii) issue preference shares other than preference shares compulsorily convertible to ordinary shares;

(iii) convert any of its shares into preference shares;

(iv) convert any of its preference shares of a particular class into preference shares of another class;

(v) convert any of its shares, including preference shares, into debentures;

(vi) reduce its share capital;

[Sub-para. (vi) substituted by s. 8 (a) of Act No. 17 of 2003.]

Wording of Sections

(vii) issue different classes of ordinary shares;

[Sub-para. (vii) added by s. 8 (b) of Act No. 17 of 2003.]

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

[Sub-para. (viii) added by s. 8 (b) of Act No. 17 of 2003.]

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

[Sub-para. (ix) added by s. 8 (b) of Act No. 17 of 2003.]

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

[Para. (a) amended by s. 8 (b) of Act No. 17 of 2003.]

Wording of Sections

(b) notwithstanding section 101 of the Companies Act, issue share warrants to bearer as contemplated in that section.

25. Registration of shares in name of nominee.—(1) A long-term insurer shall not knowingly—

(a) allot or issue any of its shares to, or register any of its shares in the name of, a person other than the intended beneficial shareholder;

(b) register transfer of any of its shares to a person other than the intended beneficial shareholder,

without the approval of the Registrar.

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

(a) to or in the name of a trustee of a unit trust scheme as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or of a nominated company of the trustee approved by the Registrar of Unit Trust Companies;

(b) to or in the name of any executor, administrator, trustee, curator, guardian or liquidator in the circumstances contemplated in section 103 (3) of the Companies Act;

(c) for a period of not more than six months, to or in the name of a stock-broker or a company floated by a stock-broker for the purposes contemplated in section 12 (1) (s) of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or to or in the name of a company controlled by a long-term

insurer or an employee of the long-term insurer, if it is necessary that the shares be so allotted, issued or registered in order to facilitate delivery to the purchaser or to protect the rights of the beneficiary in respect of those shares;

(d) to or in the name of a person acting as a depository 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: 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;

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

26. Limitation on control and certain shareholding or other interest in long-term insurers.—(1) Subject to this section, no person shall, without the approval of the Registrar, acquire or hold shares or any other interest in a long-term insurer which results in that person, directly or indirectly, alone or with a related party, exercising control over that long-term insurer.

[Sub-s. (1) substituted by s. 9 (a) of Act No. 17 of 2003.]

Wording of Sections

(2) No person shall acquire shares in a long-term insurer if the aggregate nominal value of those shares, by itself or together with the aggregate nominal value of the shares already owned by that person or by that person and his, her or its related parties, will amount to 25 percent or more of the total nominal value of all of the issued shares of the long-term insurer concerned, without first having obtained the approval of the Registrar.

[Sub-s. (2) substituted by s. 9 (b) of Act No. 17 of 2003.]

Wording of Sections

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

(a) may be given—

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

[Sub-para. (i) substituted by s. 9 (c) of Act No. 17 of 2003.]

Wording of Sections

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

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

(i) the public interest; or

(ii) the interests of the policy-holders, or of persons who may become policy-holders, of the long-term insurer; and

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

- (i) of the aggregate nominal value; and
- (ii) for the minimum period, not exceeding 12 months, that the Registrar may determine.

[Para. (c) amended by s. 9 (d) of Act No. 17 of 2003.]

#### Wording of Sections

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

(a) compelling such shareholder to reduce, within a period determined by the Court, that shareholding to a shareholding with a total nominal value not exceeding 25 per cent of the total nominal value of all the issued shares of the long-term insurer; and

(b) limiting, with immediate effect, the voting rights that may be exercised by such shareholder by virtue of his, her or its shareholding to 25 per cent of the voting rights attached to all the issued shares of the long-term insurer.

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

(a) a natural person, means—

- (i) his or her spouse;
- (ii) his or her child, parent, step-child or step-parent and any spouse of any such person;

(iii) another person who has entered into an agreement or arrangement with that natural person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the long-term insurer concerned;

(iv) a juristic person whose board of directors acts in accordance with his or her directions or instructions;

(v) a trust controlled or administered by him or her;

(b) a juristic person—

(i) which is a company, means its subsidiary and its holding company and any other subsidiary or holding company thereof;

(ii) which is a close corporation registered under the Close Corporations Act, 1984 (Act No. 69 of 1984), means any member thereof as defined in section 1 of that Act;

(iii) which is not a company or a close corporation, means another juristic person which would have been its subsidiary or holding company—

(aa) had it been a company; or

(bb) in the case where that other juristic person, too, is not a company, had both it and that other juristic person been a company;

(iv) means any person in accordance with whose directions or instructions its board of directors acts;

(v) means another juristic person whose board of directors acts in accordance with its directions or instructions;

(vi) means a trust controlled or administered by it.

[Sub-s. (5) amended by s. 9 (e) of Act No. 17 of 2003.]

#### Wording of Sections

(6) For the purposes of this section a person shall be deemed to exercise control over a long-term insurer if that person, alone or with related parties—

(a) holds shares in the long-term insurer of which the total nominal value represents 25 per cent or more of the nominal value of all the issued shares thereof;

(b) holds shares which entitle such person to exercise more than 25 per cent of the voting rights attached to the issued shares of that long-term insurer; or

(c) has the power to determine the appointment of 25 per cent or more of the directors of that long-term insurer, including the power—

(i) to appoint or remove, without the concurrence of another person, 25 per cent or more of the directors; or

(ii) to prevent a person from being appointed as a director without another person's consent.

[Sub-s. (6) amended by s. 9 ( f ) of Act No. 17 of 2003.]

#### Wording of Sections

27. Furnishing of information concerning shareholders.—(1) A long-term insurer shall, whenever required to do so by the Registrar, furnish the Registrar with a return, in the form and containing the particulars and information which the Registrar determines, in respect of its shareholders and of any person who directly or indirectly has the power to require those shareholders to exercise their rights as shareholders in the long-term insurer in accordance with such person's directions or instructions.

(2) A person in whose name shares in a long-term insurer are registered, or who wishes shares in a long-term insurer to be allotted or issued to such person or to be registered in such person's name, and any person acting on behalf of such person, shall, upon the written request of the long-term insurer concerned,

furnish it with the information it may require for the purposes of complying with section 25 (1).

28. Effect of registration of shares contrary to Act.—(1) No person shall—

(a) either personally or by proxy granted to another person, cast a vote attached to; or

(b) receive a dividend payable in respect of,

a share in a long-term insurer allotted or issued to such first-mentioned person or registered in such person's name contrary to this Act.

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

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

#### PART IV

#### FINANCIAL ARRANGEMENTS

29. Maintenance of financially sound condition.—(1) A long-term insurer shall at all times maintain its business in a financially sound condition by—

(a) having assets;

(b) providing for its liabilities and capital adequacy requirement; and

[Para. (b) substituted by s. 10 (a) of Act No. 17 of 2003.]

#### Wording of Sections

(c) generally conducting its business,

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

[Sub-s. (1) amended by s. 10 (b) of Act No. 17 of 2003.]

#### Wording of Sections

(2) A long-term insurer shall be deemed to have failed to comply with subsection (1) if it does not have—

(a) assets as required by section 30; or

(b) in the Republic assets as required by section 31.

(3) A long-term insurer which fails to comply with subsection (1) shall, within 30 days after becoming aware of it, notify the Registrar of the failure and furnish the reasons therefor.

30. Assets.—(1) A long-term insurer shall—

(a) have assets the aggregate value of which, on any day, is not less than the aggregate value, on that day, of its liabilities and capital adequacy requirement; and

(b) subject to section 32, have, in the Republic, assets, the aggregate value of which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which are to be met in the Republic, and the capital adequacy requirement in respect of those liabilities,

when the values of those assets, liabilities and capital adequacy requirement are calculated as set out in Schedule 3.

[Sub-s. (1) substituted by s. 11 (a) of Act No. 17 of 2003.]

Wording of Sections

(2) A long-term insurer shall not declare a dividend or pay a dividend to its shareholders—

(a) while it fails to comply with subsection (1):

(b) if that would result in it failing to comply with subsection (1); or

(c) if, after such declaration or payment, it would have assets the aggregate value of which would be less than the aggregate value of its liabilities, issued share capital and non-distributable reserves.

[Sub-s. (2) substituted by s. 11 (b) of Act No. 17 of 2003.]

Wording of Sections

(3) A long-term insurer shall not declare a dividend or pay a dividend to its shareholders unless its statutory actuary has certified that the declaration and payment thereof will not be contrary to subsection (2).

31. Kinds and spread of assets.—(1) Subject to section 32, a long-term insurer shall, in the Republic, have assets, other than assets in respect of linked liabilities—

(a) which have an aggregate value which, on any day, is not less than the aggregate value, on that day, of those of its liabilities which have to be met in the Republic, and minimum capital adequacy requirement, when the values of those assets are calculated by reference to their fair value and the values of those liabilities, other than the said linked liabilities, and minimum capital adequacy requirement, are calculated as set out in Schedule 3; and

(b) which are of the kinds specified in Schedule 1; and

(c) which have a fair value which, when expressed as a percentage of the aggregate value of its liabilities and minimum capital adequacy requirement referred to in paragraph (a), does not exceed the percentage specified in the regulations in respect of particular kinds or categories of those assets, unless the Registrar otherwise approves either in advance or at any time after having received the notice referred to in section 29 (3)—

(i) in a particular case;

(ii) for the specified period; and

(iii) subject to such conditions as the Registrar may determine.

[Sub-s. (1) substituted by s. 12 of Act No. 17 of 2003.]

#### Wording of Sections

(2) Subject to subsection (1), the kinds of assets that a long-term insurer has, and the spread of those assets among different kinds, shall—

(a) to the satisfaction of the statutory actuary of the long-term insurer, be proper and suitable having regard to the nature of its various liabilities and the time when, the place where, and the manner in which, it is required, or expects to be required, to meet those liabilities; and

(b) to the extent so prescribed, comply with any general requirement prescribed by the Registrar for the appropriate matching of assets and liabilities.

32. Deeming provisions concerning assets.—(1) For the purposes of sections 30 and 31—

(a) an asset of the kind specified in item 13, 16 (2), (3) or (5) or 20 (c) of the Table to Schedule 1, shall, subject to paragraph (b), be deemed to be in the Republic;

(b) if there is documentary evidence of the title of a long-term insurer to an asset, that asset shall be deemed not to be in the Republic unless the documentary evidence is in the Republic or is held outside the Republic in such a manner and subject to such conditions as the Registrar may determine; and

(c) an asset shall be deemed not to be held by a long-term insurer if it has been encumbered contrary to section 34 (1) (a) in favour of another person, or if it is held by another person contrary to section 34 (1) (b), unless the person in whose favour it is encumbered or the person holding that asset is—

(i) the Minister of Labour or the Director-General: Labour, or any person acting on behalf of that Minister or Director-General in accordance with the laws of the Republic relating to compensation for occupational injuries and diseases;

(ii) the government of any country other than the Republic in which the long-term insurer carries on insurance business or intends to carry on such business, or any person acting on behalf of such government, if the long-term insurer has encumbered those assets in favour of, or transferred those assets into the name of, that government or that person in order to comply with the laws of that country relating to long-term insurance; or

(iii) another insurer and the encumbrance or transfer takes place in terms of a re-insurance policy.

(2) If the assets which a long-term insurer holds in respect of its long-term insurance business in any of its policy-holder funds include shares in its holding company—

(a) such shares shall, for the purposes of section 39 (2) of the Companies Act, be deemed to be held by the long-term insurer in a representative capacity or as a trustee for the sole benefit of the owners of the



policies for which the policy-holder fund concerned exists, whether the holding company is incorporated in the Republic or not;

(b) such shares shall only be held by the long-term insurer with the prior approval of the Registrar and subject to such conditions as the Registrar may determine; and

(c) the long-term insurer shall not have the right to vote at meetings of the holding company or at meetings of any class of members thereof.

(3) For the purposes of subsection (2) "policy holder fund" means a fund referred to in paragraph (a), (b) or (c) of section 29 (4) of the Income Tax Act, 1962 (Act No. 58 of 1962).

33. Liabilities.—(1) For the purposes of this Act, the liabilities of a long-term insurer shall include its contingent liabilities for policy benefits which have not become claimable, and which are specified in Schedule 3.

[Sub-s. (1) substituted by s. 13 (a) of Act No. 17 of 2003.]

Wording of Sections

(2) . . . . .

[Sub-s. (2) deleted by s. 13 (b) of Act No. 17 of 2003.]

Wording of Sections

34. Prohibitions concerning assets and certain liabilities.—(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) 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;

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

[Para. (e) added by s. 14 (a) of Act No. 17 of 2003.]

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

(2) A long-term insurer shall not invest in derivatives other than—

(a) derivatives designated as an asset in respect of a linked policy;

[Para. (a) substituted by s. 14 (b) of Act No. 17 of 2003.]

Wording of Sections

(b) derivatives acquired out of or in respect of assets that are in excess of the assets required to meet the long-term insurer's liabilities under long-term policies in terms of section 30 (1);

(c) for the purpose of reducing investment risk or for efficient portfolio management; or

(d) in such a manner that the long-term insurer will, or reasonably expects to, have the asset at the settlement date of the derivative instrument which matches its obligations under that instrument and from which it can discharge those obligations.

35. Failure to maintain financially sound condition.—(1) If a long-term insurer gives notice to the Registrar in terms of section 29 (3), or if the Registrar is satisfied that a long-term insurer is failing, or is likely to fail within a reasonable period, to comply with section 29 (1), the Registrar may, by notice, direct that long-term insurer to furnish the Registrar, within a specified period, with—

(a) specified information relating to the nature and causes of the failure; and

(b) its proposals as to the course of action that it should adopt to ensure its compliance with section 29 (1).

(2) When the Registrar has received the information and proposals referred to in subsection (1), the Registrar may, without derogating from the Registrar's powers under section 11 or 12 or any other provision of this Act—

(a) authorise the long-term insurer concerned, by notice, to adopt a course of action, approved by the Registrar after considering those proposals and after consultation with the auditor and the statutory actuary of the long-term insurer, and which the Registrar is satisfied will reasonably ensure that the long-term insurer complies with section 29 (1), and the Registrar may, at that time or at any time thereafter, after further consultation with the auditor and the statutory actuary, by notice authorise the modification of that course of action to the extent that the Registrar deems appropriate in the circumstances; or

(b) if it is reasonably necessary in the interests of the policy-holders of the long-term insurer, at that time, or at any time thereafter, and notwithstanding any steps already taken by the Registrar in accordance with paragraph (a) or any other provision of this Act, act in accordance with section 41 (2) or 42 (2).

36. Returns to Registrar.—(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.

[Sub-s. (1), previously s. 36 amended by s. 15 of Act No. 17 of 2003 (English only).]

(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.

#### PART V

#### COMPROMISE, ARRANGEMENT, AMALGAMATION, DEMUTUALISATION AND TRANSFER

37. Court approval required for compromise, arrangement, amalgamation, demutualisation or transfer.—(1) No transaction to which a long-term insurer is a party and which constitutes an agreement by which all or any part of the business of a long-term insurer is transferred to another person, or by which a compromise, arrangement or amalgamation contemplated in Chapter XII of the Companies Act is effected, or by which a long-term insurer which is not a company having a share capital is to be converted into a public company having a share capital, shall have legal force without the approval of the Court.

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

38. Application to Court.—(1) When application is made to the Court for the approval of a transaction referred to in section 37—

(a) the parties to the transaction shall jointly—

(i) at least 60 days before lodging the application, give notice to the Registrar thereof together with full particulars of the transaction;

(ii) at least 30 days before lodging the application, cause a notice, in the form and containing the information required by the Registrar, to be published in such official languages in the Gazette and in such other newspapers as the Registrar may determine;

(iii) before lodging the application, serve upon the Registrar a copy of the notice of motion, and of all accompanying affidavits and other documents relating thereto and to be filed in support of the application;

(b) a person who has an interest in the matter may, by notice given to the Registrar within 15 days after the publication in the Gazette of the notice referred to in paragraph (a) (ii), submit to the Registrar such representations concerning the transaction as are relevant to his, her or its interests;

(c) the Registrar may—

(i) appoint a person, at the cost of the parties to the transaction, to enquire into, and report to him or her on, the desirability or otherwise of the transaction; and

(ii) by notice, direct any party to the transaction to provide the Registrar that person with all information and documents relating to the transaction which he or she may require;

(d) the Registrar and any policy-holder, shareholder or creditor of the long-term insurer concerned may file affidavits and other documents relating thereto and may appear and be heard at the hearing of the application.

(2) A long-term insurer may propose, conclude or give effect to any transaction or combination of transactions contemplated in section 37 (1) notwithstanding anything provided or not provided in the law, memorandum or other document under which any party to the transaction or transactions concerned is constituted or in the articles of association or other rules of any such party.

(3) If a long-term insurer which is not a company having a share capital applies to the Court for approval of a transaction or combination of transactions in terms of a scheme which proposes or is in connection with its demutualisation, such scheme may include, and the Court may approve the following matters, namely—

(a) the allotment, issue or transfer to any person by any party to such scheme of shares in the long-term insurer or in a company which is to become the holding company of any such party, whether in substitution for membership of the long-term insurer or otherwise;

(b) the cessation of membership of the long-term insurer;

(c) the date on which such scheme takes effect, which date may be a date before or after the date of approval by the Court.

39. Conditions of approval.—Notwithstanding the provisions of the Companies Act, the approval of the Court of a transaction referred to in section 37 (1) shall not be granted—

(a) unless the provisions of this Part have been complied with;

(b) if the transaction is inconsistent with this Act or contrary to the interests of the policy-holders of the long-term insurer concerned; or

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

[Para. (c) substituted by s. 16 of Act No. 17 of 2003.]

#### Wording of Sections

40. Approved transaction.—(1) A transaction referred to in section 37 (1) which is approved by the Court shall be binding on all persons and shall have effect as ordered by the Court notwithstanding anything to the contrary contained in the constitution or rules of the parties thereto.

(2) Notice of the passing of a special resolution (if any) by the members of a long-term insurer confirming a transaction referred to in section 37 (1), together with a copy of the resolution and of the terms and conditions of the transaction, certified by the chairperson of the meeting at which the resolution was passed and by the public officer of the long-term insurer to be a true and correct copy shall be furnished to the Registrar by the long-term insurer concerned, within 60 days of the passing of the resolution, and certified copy of the order of Court as soon as practicable.

(3) (a) The officer in charge of a deeds registry or other office in which is registered any bond or movable or immovable property which is to be transferred in accordance with a transaction referred to in section 37 (1) or 70 shall, upon production by the long-term insurer concerned of the relevant bond, title deed or registration certificate and a certified copy of the order of Court concerned, and without payment of any duty, tax, registration fee or other charge, make the endorsements upon the bond, title deed or registration certificate and the entries in his or her registers that are necessary to effect the transfer concerned.

(b) The exemption from the payment of any duty, tax, registration fee or charge contemplated in paragraph (a) shall only apply in the case of a transaction resulting from—

- (i) a transfer of business compelled by law; or
- (ii) the initiative or at the direction of the Registrar under section 35.

(4) A long-term insurer which is converted into a public company in accordance with this Part shall continue its corporate existence in the form of a public company incorporated under the Companies Act, and the Registrar of Companies shall register its memorandum and articles of association in accordance with section 63 of the Companies Act.

#### PART VI

##### JUDICIAL MANAGEMENT AND WINDING-UP OF LONG-TERM INSURERS

41. Judicial management.—(1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, Chapter XV of the Companies Act shall, subject to this section and with the necessary changes apply in relation to the judicial management of a long-term insurer whether or not it is a company, and in such application the Registrar shall

be deemed to be a person authorised by section 346 of the Companies Act to make an application to the Court for the winding-up thereof.

(2) The Registrar may make an application under section 427 (2) of the Companies Act for a judicial management order in respect of a long-term insurer if he or she is satisfied, whether as contemplated in section 12 (3) or 35 (2) of this Act, or otherwise, that it is in the interests of the policy-holders of that long-term insurer to do so.

(3) In the application of Chapter XV of the Companies Act as provided by subsection (1)—

(a) a reference which relates to the inability of a long-term insurer to pay its debts or to meet its obligations shall be construed as relating also to its inability to comply with the requirements prescribed by section 29 (1) of this Act;

(b) in addition to any question which relates to the nature of a long-term insurer as a successful concern, there shall be considered also the question whether any course of action is in the interests of its policy-holders;

(c) in the following sections of the Companies Act, namely—

(i) sections 432 (2) and 433 (b), the reference to the creditors of a company shall be construed as a reference also to the policy-holders of a long-term insurer;

(ii) sections 432 (2) (e) and 433 (d), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar;

(iii) sections 428 (3), 432 (4) and 433 (j), the reference to the Master shall be construed as a reference also to the Registrar; and

(iv) section 433 (j), the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act.

(4) If an application to the Court for the judicial management of a long-term insurer is made by a person other than the Registrar—

(a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is set down for hearing;

(b) the Registrar may, if satisfied that the application is contrary to the interests of the policy-holders of the long-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

(5) As from the date on which a provisional or final judicial management order is granted in respect of a long-term insurer—

(a) any reference in this Act to a long-term insurer shall, unless clearly inappropriate, be construed as a reference to the provisional or final judicial manager, as the case may be;

(b) the provisional or final judicial manager of a long-term insurer shall not enter into any long-term policies unless he or she has been granted permission to do so by the Court in the provisional or final judicial management order or in a variation thereof.

42. Winding-up by Court.—(1) Notwithstanding the provisions of the Companies Act or any other law under which a long-term insurer is incorporated, Chapter XIV of the Companies Act shall, subject to this section and with the necessary changes, apply in relation to the winding-up of a long-term insurer, and in such application the Registrar shall be deemed to be a person authorised by section 346 of the Companies Act to make an application to the Court for the winding-up thereof.

(2) The Registrar may, with the written approval of the Minister, make an application under section 346 of the Companies Act for the winding-up of a long-term insurer if he or she is satisfied, whether as contemplated in section 12 (3) or 35 (2) of this Act, or otherwise, that it is in the interests of the policy-holders of that long-term insurer to do so.

(3) In the application of Chapter XIV of the Companies Act as provided by subsection (1)—

(a) a reference which relates to the inability of a long-term insurer to pay its debts shall be construed as relating also to its inability to comply with the requirements prescribed by section 29 (1) of this Act;

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

(c) notwithstanding any other provision of that Chapter, there shall be considered whether a person is acting in contravention of section 7 (1) (a) of this Act;

(d) in the following sections of the Companies Act, namely—

(i) sections 392, 394 (5) and 400, the reference to the Master shall be construed as a reference also to the Registrar;

(ii) sections 375 (5) (a) and 419 (1), the reference to the Registrar of Companies shall be construed as a reference also to the Registrar; and

(iii) section 400, the reference to a contravention of any provision of that Act shall be construed as a reference also to a contravention of any provision of this Act; and

(e) section 346 (3) of the Companies Act shall not apply where the Registrar makes the application to Court.

(4) If an application to the Court for or in respect of the winding-up of a long-term insurer is made by any person other than the Registrar—

(a) it shall not be heard unless copies of the notice of motion and of all accompanying affidavits and other documents filed in support of the application are lodged with the Registrar at least 15 days, or such shorter period as the Court may allow on good cause shown, before the application is set down for hearing; and

(b) the Registrar may, if satisfied that the application is contrary to the interests of the policy-holders of the long-term insurer concerned, join the application as a party and file affidavits and other documents in opposition to the application.

43. Voluntary winding-up.—No special resolution relating to the winding-up of a long-term insurer as contemplated in section 349 of the Companies Act shall be registered in terms of section 200 of that Act, and no special resolution to that effect in terms of the constitution of a long-term insurer which is not a company shall have legal force—

(a) unless a copy thereof has been lodged with the Registrar and he or she has, by notice to the long-term insurer, declared that arrangements satisfactory to the Registrar have been made to meet all liabilities of the long-term insurer under long-term policies entered into by it prior to the winding-up; or

(b) if the Registrar, by notice to the long-term insurer, declares that the resolution is contrary to this Act.

## PART VII

### BUSINESS PRACTICE, POLICIES AND POLICYHOLDER PROTECTION

#### Business practice

44. Free choice in certain circumstances.—(1) If a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, whether as a condition thereof or otherwise, that a long-term policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall be entitled, and shall be given prior written notification of that entitlement, to a free choice—

(a) as to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options; and

(b) if a new policy is to be entered into—

(i) as to the long-term insurer with which the policy is entered into and as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction;



(ii) as to whether or not the policy benefits concerned are to be provided in an event other than the death or disability of the life insured; and

(iii) as to whether or not the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, shall exceed the value of that debt or other obligation; and

(c) if an existing policy is to be made available—

(i) as to the intermediary (if any) who is to render services contemplated in section 49 in connection with the transaction; and

(ii) as to whether or not a variation of the policy required for that purpose shall be such as to cause—

(aa) policy benefits to be provided in an event other than the death or disability of the life insured; or

(bb) the value of the policy benefits to be provided thereunder, when taken in the aggregate with the value of the policy benefits provided under any other policy which is also to be made available and used for that purpose, to exceed the value of that debt or other obligation.

(2) The provisions of subsection (1) shall be deemed not to have been complied with unless the policy-holder whose policy is to be made available has confirmed in writing, before the policy is used for the purpose of securing the debt concerned or other obligation, that he or she—

(a) was given prior written notification of his or her entitlement to the freedom of choice referred to in that subsection;

(b) exercised that freedom of choice; and

(c) was not subject to any coercion or inducement as to the manner in which he or she exercised that freedom of choice.

(3) If the provisions of subsection (1) are not complied with, the security provided by the policy made available and used for the purpose shall be void and the policy benefits shall be provided to the person who made it available.

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

[Sub-s. (4) added by s. 17 of Act No. 17 of 2003.]

45. Prohibition on inducements.—No person shall provide, or offer to provide, directly or indirectly, any valuable consideration as an inducement to a person to enter into, continue, vary or cancel a long-term policy, other than a re-insurance policy.

46. Policy to be actuarially sound.—A long-term insurer shall not—

(a) enter into any particular kind of long-term policy unless the statutory actuary is satisfied that the premiums, benefits and other values thereof are actuarially sound;

(b) make a distinction between the premiums, benefits or other values of different long-term policies unless the statutory actuary is satisfied that the distinction is actuarially justified; or

(c) award a bonus or similar benefit to a policy-holder unless the statutory actuary is satisfied that it is actuarially sound and that a surplus is available for that purpose.

47. Receipt for premium paid in cash, and validity of policy.—(1) When a premium is paid in bank notes or coins, the recipient thereof shall give to the payer a written receipt for it.

(2) (a) The receipt 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.

(b) Paragraph (a) does not apply to a receipt issued by a bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), or by a mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993).

[Para. (b) added by s. 18 of Act No. 17 of 2003.]

(3) For the purposes of the validity of a long-term policy the payment of a premium under the long-term policy to a person on behalf of the long-term insurer shall be deemed to be payment to the long-term insurer under that long-term policy.

48. Summary, inspection and copy of policy.—(1) A person who enters into or varies a long-term policy, other than a fund policy and a re-insurance policy, shall be provided in writing or in another form prescribed by the Registrar, by the long-term insurer concerned, with information, in the form of a summary, relating to at least the following matters, namely—

(a) those of the representations made by or on behalf of that person to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy;

(b) the premiums payable and the policy benefits to be provided under the policy; and

(c) the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are not to be provided,

and shall be provided with that information as soon as possible, but not later than 60 days after the parties enter into or agree to vary the policy.

(2) The summary referred to in subsection (1) shall be prima facie proof of the agreement, but shall—

(a) not be deemed to be part of the policy;

(b) in the absence of evidence to the contrary, be deemed to be exhaustive of the matters which are material to the assessment of the risks under the policy.

(3) The policy-holder shall be entitled to be provided, upon request, with a copy of the policy.

49. Limitation of remuneration to intermediaries.—No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary 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.

50. Undesirable business practice.—(1) Notwithstanding anything to the contrary in any law contained, the Registrar may, after consultation with the Advisory Committee and in concurrence with the Minister, by notice in the Gazette declare a particular business practice to be undesirable for—

(a) all or a particular category of long-term insurers; or

(b) all or a particular category of persons who render services in respect of long-term policies.

(2) The Minister shall not concur with a declaration referred to in subsection (1) unless the Registrar has, at least 30 days before that concurrence is requested, by notice in the Gazette published his or her intention to make the declaration and invited interested persons thereby to make written representations concerning the intended declaration so as to reach him or her within 21 days after the date of publication of that notice.

(3) If the Registrar is satisfied that a long-term insurer or a person rendering services in respect of long-term policies is carrying on a business practice which may become the subject of a declaration under this section, he or she may, in concurrence with the Minister, by notice direct that long-term insurer or person to suspend that particular business practice for such period, not exceeding three months, as he or she deems necessary to enable the matter to be dealt with in accordance with subsection (1).

(4) A long-term insurer or other person shall not, on or after the date of a notice referred to in subsection (1), or of a directive referred to in subsection (3), carry on the business practice concerned.

(5) The Registrar may, by notice, direct a long-term insurer or other person who, on or after the date of a notice referred to in subsection (1), or a directive referred to in subsection (3), carries on the business practice concerned, to rectify, to the satisfaction of the Registrar, anything which was caused by or arose out of that carrying on of the business practice concerned.

(6) A long-term insurer or other person who is, under subsection (5), directed to rectify anything, shall do so within 60 days after he, she or it is so directed.

#### Policies

51. Policy suspended until payment of first premium.—The undertaking of a long-term insurer to provide policy benefits under a long-term policy, other than

a fund policy or a re-insurance policy, shall be suspended until the long-term insurer has received, if there—

- (a) is to be one premium, that premium; or
- (b) are to be two or more premiums, the first of those premiums,

or until arrangements to its satisfaction have been made for the provision of the premium by debit order, stop order, credit card or other instrument approved by the Registrar generally by notice in the Gazette.

52. Failure to pay premiums.—(1) If a premium under a long-term policy, other than a fund policy or a re-insurance policy, has not been paid on its due date, the long-term insurer shall notify the policy-holder of the non-payment, and the policy shall, notwithstanding anything therein to the contrary, in the case of a long-term policy under which there are to be two or more premium payments at intervals of—

- (a) one month or less, remain in force for a period of 15 days after that due date; or
- (b) longer than one month, remain in force for a period of one month after that due date,

or for such longer period as may be determined by agreement between the parties, and if the overdue premium is not paid by the end of any such period, the policy shall be dealt with in accordance with subsection (2).

(2) In the case of a policy contemplated in subsection (1) the remaining value of which, after the satisfaction of any claim of the long-term insurer which is secured solely by the policy benefits to be provided under the policy, is greater than half of the aggregate amount of the premium payments due thereunder during the period of 12 months commencing on the due date of the unpaid premium, the long-term insurer shall—

- (a) inform the policy-holder, in the medium prescribed by the Registrar, of the amount of that remaining value and notify him or her that the policy will remain in force, in accordance with the rules of the long-term insurer, until—

- (i) the policy no longer has any such remaining value, whereupon it will lapse;

- (ii) the payment of premiums is resumed;

- (iii) the provisions of the policy are amended, in accordance with the rules of the long-term insurer, so that it becomes a policy which is fully paid-up; or

- (iv) if the policy-holder so requests, the policy is surrendered, in accordance with the rules of the long-term insurer, and so much of the remaining value as then remains is, subject to section 54, paid to the policy-holder; and

- (b) deal with the policy accordingly.

(3) A long-term insurer shall have rules which to the satisfaction of its statutory actuary prescribe a sound basis on which, and the methods by which, a long-term policy is to be valued and otherwise dealt with for the purposes of subsection (2).

53. Option for payment of policy benefits in money.—Notwithstanding the terms of an assistance policy, either party thereto may request that a policy benefit which is expressed otherwise than in a sum of money shall be provided as a sum of money equal in value to the cost that would have been incurred by the long-term insurer had the non-monetary benefit been provided.

54. Limitation on provisions of certain policies.—A long-term insurer shall not—

- (a) undertake to provide policy benefits, or provide policy benefits, under;
- (b) provide consideration upon the surrender of; or
- (c) make a loan upon the security of,

a long-term policy contemplated in the regulations, otherwise than in accordance with the requirements and limitations set out in the regulations.

55. Limitation on policy benefits in event of death of unborn or of certain minors.—(1) A long-term insurer shall not undertake to provide, or provide, policy benefits in terms of a life policy or assistance policy, in the event of the death of an unborn, or of a minor before that minor attains the age of 14 years, the value of which, on its own or when added to the value of policy benefits which to its knowledge are to be provided in that event by a long-term insurer or a short-term insurer or a friendly society in terms of any policy, exceeds, in the event of the death—

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

or such other amount prescribed by the Minister: Provided that this section shall not apply to or prohibit the allocation of profit in respect of such policies on the lives of minors, which allocation does not exceed the profits allocated to other such policies on the lives of persons who are not minors.

(2) Subsection (1) shall not apply in relation to a policy in terms of which, in the event of the death of the unborn, or of the minor before he or she attains the age of 14 years, the value of the policy benefits does not exceed an amount equal to the aggregate of all the premiums paid in terms of that policy, plus interest on each premium at a rate prescribed by the Minister, compounded annually.

56. Voidness of certain provisions of agreements relating to long-term policies.—A provision of an agreement, the purport of which is that—

- (a) a long-term insurer is exempted from liability for the actions, omissions or representations of a person acting on its behalf in relation to a long-term policy;

(b) the person who has entered into the long-term policy declares or admits that a person who acted on behalf of the long-term insurer in connection with an offer of that person to do so, or with the negotiations preceding the entering into it, was in fact appointed to act on behalf of the first-mentioned person;

(c) the obligation of a long-term insurer under a long-term policy is dependant upon the discharging of an obligation of another person under a re-insurance policy; or

(d) a person who has entered into a long-term policy, or the life insured under a long-term policy, waives a right to which he or she, by or under this Act, is entitled,

shall be void.

57. Life policy in relation to person rendering or liable to render military service.—(1) A long-term insurer shall not refuse to enter into a life policy on the grounds that the life insured is a person rendering or liable to render military service in accordance with the Defence Act, 1957 (Act No. 44 of 1957).

(2) Notwithstanding anything to the contrary in a life policy contained, the policy benefits to be provided thereunder in the event of the death of the life insured in the course of or as a result of the rendering of military service in accordance with the Defence Act, 1957, shall not be less than an amount equal to the value for which the policy could be surrendered on the day of the death of the life insured, had the regulations not been made.

58. Long-term policies entered into by certain minors.—A minor who has attained the age of 18 years may, without the consent of his or her guardian as if he or she has attained majority, enter into or vary, or deal with a long-term policy under which he or she is the life insured and pay the premium due under the policy with money which he or she has earned or which is at his or her disposal, and a policy benefit under the policy shall be provided to the minor who may deal with it as he or she thinks fit without the consent of his or her guardian, as if he or she has attained majority.

59. Misrepresentation and failure to disclose material information.—

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

(i) the policy shall not be invalidated;

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

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

on account of any representation made to the insurer which is not true, or failure to disclose information, whether or not the representation or disclosure has been warranted to be true and correct, unless that representation or non-disclosure is such as to be likely to have materially affected the assessment of the risk under

the policy concerned at the time of its issue or at the time of any variation thereof.

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

[Sub-s. (1) substituted by s. 19 of Act No. 17 of 2003.]

Wording of Sections

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

[S. 59 amended by s. 19 of Act No. 17 of 2003.]

Wording of Sections

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

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

(3) Any contract entered into before the commencement of this Act the entering into of which is contrary to this Act or which contains terms prohibited by this Act, shall not be void nor shall the performance of its terms be unlawful merely because of any such fact.

61. Prescription of certain debt.—Debt consisting of interest on an unpaid premium, or on a loan granted by a long-term insurer on 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, in the case of a long-term policy entered into after 31 December 1973, not prescribe before the liability of the long-term insurer under the long-term policy prescribes.

#### Policyholder Protection

62. Protection of policy-holders.—(1) The Advisory Committee, or the Registrar after consultation with the Advisory Committee, may—

(a) propose rules aiming to ensure that policies are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest generally;

(b) propose the variation or rescission of any such rule; and

(c) propose the period which must elapse before a rule, variation or rescission takes effect after it has been published in the Gazette in terms of subsection (5).

(2) Without derogating from the generality of subsection (1) (a), a rule may provide that—

(a) provisions with a particular import may not appear in a policy and that they shall be void if they do so appear;

(b) particular information in relation to a policy shall be made known in a particular manner to a prospective policy-holder or policy-holder, and what the legal consequences shall be if that is not done;

(c) a policy-holder may cancel a policy under particular circumstances and within a determined period, and what the legal consequences shall be if he or she does that;

(d) different arrangements shall apply in relation to different kinds of long-term policies; and

(e) in respect of a contravention of, or a failure to comply with, a rule, a penalty or fine referred to in section 66 (1) (c) or 67 (1) (c) shall apply.

(3) The Registrar shall publish in the Gazette a rule, variation or rescission proposed under subsection (1), together with—

(a) a notice of intention to promulgate the rule, variation or rescission; and

(b) an invitation to all interested persons to make written representations in relation to the matter so as to reach the Registrar within 21 days, or a longer period specified in the notice, after the date of publication of the notice.

(4) The Registrar shall submit to the Minister the proposed rule, variation or rescission and all written representations received accompanied by the Registrar's comments and those of the Advisory Committee thereon and, after consideration thereof, the Minister may reject, or approve as proposed, or approve in a



modified form which the Minister deems fit, the proposed rule, variation or rescission.

(5) If the Minister approves, whether as proposed or in a modified form, a proposed rule, variation or rescission, the Minister shall promulgate it by notice in the Gazette, and thereupon it shall be binding on all parties concerned with effect from a date determined by the Minister and specified in the notice.

63. Protection of policy benefits under certain long-term policies.—(1) Subject to subsections (2) and (3), the policy benefits provided or to be provided to a person under one or more assistance, life, disability or health policies in which that person or the spouse of that person is the life insured and which has or have been in force for at least three years (or the assets acquired exclusively with those policy benefits) shall, other than for a debt secured by the policy—

(a) during his or her lifetime, not be liable to be attached or subjected to execution under a judgment of a court or form part of his or her insolvent estate; or

(b) upon his or her death, if he or she is survived by a spouse, child, step-child or parent, not be available for the purpose of the payment of his or her debts.

(2) The protection contemplated in subsection (1) shall apply to—

(a) assets acquired solely with the policy benefits, for a period of five years from the date on which the policy benefits were provided; and

(b) policy benefits and assets so acquired (if any) to an aggregate amount of R50 000 or another amount prescribed by the Minister.

(3) Policy benefits are only protected as provided in—

(a) subsection (1) (b), if they devolve upon the spouse, child, step-child or parent of the person referred to in subsection (1) in the event of that person's death; and

(b) subsection (1) (a) and (b), if the person claiming such protection is able to prove on a balance of probabilities that the protection is afforded to him or her under this section.

64. Selection for realisation of protected policies.—If—

(a) two or more long-term policies referred to in section 63, held by the same policy-holder, are attached in execution of a judgment or order of any court at the instance of a creditor; or

(b) the policy-holder of two or more long-term policies referred to in section 63 is found to be or otherwise declared insolvent by a Court,

and only a part of the aggregate realisable value of the policies is protected as contemplated in that section, the judgment creditor or the trustee of the insolvent estate, as the case may be, shall determine which policy or policies shall be realised, wholly or partially, in order to make available to him or her so much of

the aggregate realisable value as is not so protected and to which he or she is entitled.

65. Partial realisation of protected policies.—(1) A judgment creditor or the trustee of the insolvent estate of a policy-holder, who is entitled to a part of the realisable value of a long-term policy may, if he or she is in possession of the policy, deliver it to the insurer who is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.

(2) If a judgment creditor or trustee referred to in subsection (1) is not in possession of the policy concerned, the person in possession thereof shall, at the request of the judgment creditor or trustee, deliver it to the insurer which is liable under the policy for the purpose of the payment to that creditor or trustee of the sum to which he or she is entitled.

(3) On receipt of a long-term policy delivered to it in terms of subsection (1) or (2), the long-term insurer shall—

(a) at the request of the judgment creditor or trustee concerned, pay to him or her a sum equal to that part of the realisable value of the policy to which he or she is entitled; and

(b) deal with the remaining part of the realisable value of the policy in accordance with section 52 (2).

#### PART VIII

#### OFFENCES AND PENALTIES

66. Offences by persons other than long-term insurers.—(1) A person, other than a long-term insurer, who—

(a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4 (3), (4) or (5) (a) (i), 22 (2) or 27 (2);

(b) contravenes or fails to comply with a provision of section 8 (1) (a) or (b), 16 (2), 23 (1), 28 (1), 44 (1), 45, 47 or 49;

(c) where a rule contemplated in section 62 (2) (e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 62 (5), to the extent so provided; or

(d) furnishes false information in relation to an application referred to in section 9 (1) or an application for the approval of the Minister under a provision of this Act,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.

(2) A person, other than a long-term insurer, who contravenes or fails to comply with a provision of section 7 (1) (a), 8 (3), 26 (1) or (2) or 50 (4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 000 or

to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

67. Offences by long-term insurers.—(1) A long-term insurer which—

(a) contravenes or fails to comply with a provision of a notice, directive or requirement referred to in section 4 (2), (3) or (4), 22 (1) or (2), 27 (1), 31 (2), 35 (1) or (2) (a) or 36 (2);

(b) contravenes or fails to comply with a provision of section 7 (1) (b), 8 (2), 16 (1), 17, 18, 23 (1) or (2), 25 (1), 29 (3), 36 (1), 44 (1), 45, 48 (1), 49, 54 or 55 (1); or

(c) where a rule contemplated in section 62 (2) (e) so provides, contravenes or fails to comply with a provision of any rule promulgated under section 62 (5), to the extent so provided,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000.

(2) A long-term insurer who contravenes or fails to comply with a condition contemplated in section 9 (2) (a) or a provision of a notice under section 12 (2) (c) or 13 (2), or of section 7 (1) (a), 15 (1) or (2), 19 (1) or (3), 20 (1), (3) or (4), 24, 26 (1) or (2), 29 (1), 30, 31 (1), 34, 46 or 50 (4) or (6), shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 000.

68. Penalty for failure to furnish Registrar with returns etc.—(1) A person who fails to furnish the Registrar with a return, information or document, as provided by this Act, within the prescribed or specified period or any extension thereof, shall, irrespective of any criminal proceedings instituted against the person under this Act, be liable to a penalty not exceeding R1 000 for every day during which the failure continues, unless the Registrar, on good cause shown, waives the penalty or any part thereof.

(2) A penalty contemplated in subsection (1) shall be imposed by notice by the Registrar on the person concerned, and such imposition shall be preceded by the procedures prescribed by the Minister to afford such person a reasonable opportunity to be heard, and shall take effect on a date specified in such notice of the Registrar which may be a date prior to the date of the notice.

(3) A penalty so imposed shall constitute a debt due to the Board and shall be recoverable by action by the Board in any court having jurisdiction.

## PART IX

### TRANSITIONAL AND GENERAL PROVISIONS

#### Transitional provisions

69. Continued registration of existing insurers.—(1) A person who immediately prior to the commencement of this Act was registered in terms of the repealed Act, and was, by virtue of that registration, authorised to carry on long-term insurance business as defined in that Act, shall be deemed to be registered as a long-term insurer in terms of this Act and shall, subject to this Act, be authorised,

in the case of a person who was so authorised to carry on the long-term insurance business of providing or undertaking to provide policy benefits in terms of—

- (a) assistance policies;
- (b) disability policies;
- (c) fund policies;
- (d) health policies;
- (e) life policies; or
- ( f ) sinking fund policies,

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

(2) A person referred to in subsection (1) shall, within a period of six months after the commencement of this Act, make application to the Registrar in accordance with section 3 (2) for the issuing to such person, as contemplated in section 9 (2) (b), of a new certificate of registration in exchange for the certificate of registration issued to such person under the repealed Act.

(3) Upon receipt of an application in terms of subsection (2), the Registrar shall issue the new certificate of registration specifying the conditions referred to in subsection (1) as if they had been determined by him or her with the necessary changes in terms of section 9, and shall not thereupon vary any of those conditions, or determine a new condition, otherwise than in terms of section 11.

70. Certain existing insurers to cease short-term insurance business or to separate it from long-term insurance business.—A person referred to in section 69 (1), who was, by virtue of such person's registration under the repealed Act, authorised to carry on both long-term insurance business and short-term insurance business, other than re-insurance business only, as defined in that Act, shall, within a period of six months after the commencement of this Act, make arrangements satisfactory to the Registrar and in accordance with the appropriate provisions of the Short-term Insurance Act, 1998, as the case may be, which have the result—

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

General provisions

71. Special provisions concerning long-term insurers that are not public companies.—(1) Notwithstanding anything to the contrary in any law contained,

a long-term insurer which is not a public company shall be subject to section 36 of the Companies Act with the necessary changes as if it were a public company having a share capital.

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

(3) The financial statements of a long-term insurer, other than the financial statements drawn up by the statutory actuary, shall be drawn up and presented in accordance with Generally Accepted Accounting Practice.

72. Regulations.—(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 long-term insurer may invest in particular kinds and categories of assets, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies;

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

(d) 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 long-term insurer 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;

(e) 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 long-term insurer 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) prescribing different classes of persons to whom consideration contemplated in paragraphs (d) and (e) may be offered or provided, for such services rendered or to be rendered;

(g) prescribing periods within which policies and amended policies are to be issued;

(h) prescribing that every long-term insurer shall within a specified period as from the close of each financial year of its long-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.

73. Repeal and amendment of laws.—Subject to section 74, the laws specified in Schedule 4 are hereby repealed or amended to the extent set out in the third column of that Schedule.

74. Savings.—(1) Notwithstanding the partial repeal of the repealed Act by section 73, the provisions of—

(a) section 25, read with section 19A of that Act, shall continue to apply in relation to a long-term insurer that has before the commencement of this Act notified the Registrar, as defined in the repealed Act, that it intends to apply to the Court for the confirmation of a conversion contemplated in the said section 25, and if such application is made to the Court before 31 December 1999, that application may, if the long-term insurer so elects, be made, continued with and dealt with in accordance with the said provisions as if they had not been repealed by section 73;

(b) section 38, read with sections 38B, 52, 58 and 59 of that Act, shall continue to apply in relation to a policy contemplated in those sections and entered into during the period 1 April 1944 to 20 June 1978;

(c) section 38A, read with sections 38B, 52, 58, 59 and 59A of that Act, shall continue to apply in relation to any policy contemplated in those sections and entered into during the period 21 June 1978 to the date immediately before the commencement of this Act;

(d) section 62 of that Act shall continue to apply in relation to any industrial and funeral policy contemplated in that section;

(e) the Second Schedule to that Act shall continue to apply to industrial and funeral policies.

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

75. Interpretation of certain references in existing laws.—Unless it would in a particular case be clearly inappropriate, a reference in a law in force immediately before the commencement of this Act—

(a) to a domestic insurer or a registered insurer, shall be construed as a reference to a long-term insurer or a short-term insurer, as the case may be;

(b) to a home service policy, a funeral policy or an industrial policy, shall be construed as a reference to an assistance policy;

(c) to home service business, funeral business or industrial business, shall be construed as a reference to the business of providing policy benefits under assistance policies;

(d) to insurance business as defined in the repealed Act, shall, in relation to a long-term insurer, be construed as a reference to long-term insurance business;

(e) to a life policy, shall be construed as a reference to a life policy, a disability policy, a fund policy or a health policy, as the case may be;

(f) to life business, shall be construed as a reference to the business of providing policy benefits under long-term policies other than assistance policies or sinking fund policies;

(g) to a personal accident policy, shall, in relation to a long-term insurer, be construed as a reference to a disability or health policy;

(h) to personal accident business, shall, in relation to a long-term insurer, be construed as a reference to the business of providing policy benefits under disability or health policies;

(i) to a valuator, as defined in the repealed Act, shall be construed as a reference to a statutory actuary.

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