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SHORT-TERM INSURANCE ACT, 1998: PROPOSED AMENDMENTS TO THE REGULATIONS MADE UNDER SECTION 70

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

The proposed amendments focus mainly on aligning the Regulations with the Insurance Act, 2017 (Act No. 18 of 2017), and on improving the premium collection framework.

The draft Regulations and supporting documents are available on the National Treasury's website at <http://www.treasury.gov.za> and the Financial Services Board's website at <https://www.fsb.co.za>.

Comments on the proposed Regulations may be submitted in writing on or before 23 April 2018 to the National Treasury, c/o Mr Dino Lazaridis at stregulations.insurance@treasury.gov.za or faxed to (012) 315 5206.



NHLANHLA NENE
MINISTER OF FINANCE

15/03/2018

SCHEDULE

1. Interpretation

In this Schedule “the Regulations” means the Regulations under the Short-term Insurance Act, 1998 as published in GN R.1493 of 1998 and amended by GN R.462 of 2008, GN R.1076 of 2011, GN 1582 of 2016, GN 1439 of 2017.

2. The Regulations are hereby amended by the substitution of all references in the Regulations to “Registrar” with “Authority”.

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

- (a) the deletion in Regulation 1.1 of the definition “effective date”;
- (b) the substitution in Regulation 1.1 for the definition “independent intermediary” of the following definition:

“**independent intermediary**’ means a person, other than a representative, who renders services as intermediary;”;

- (c) the insertion in Regulation 1.1 after the definition “independent intermediary” of the following definition:

“**Insurance Act**’ means the Insurance Act, 2017 (Act No. 18 of 2017);”;

- (d) the deletion in Regulation 1.1 of the number preceding and the number following the definition “long-term policy”;
- (e) the insertion in Regulation 1.1 after the definition “long-term policy” of the following definition:

“**microinsurer**’ has the meaning assigned to it in section 1 of the Insurance Act;”;

- (f) the deletion in Regulation 1.1 of the number preceding and the number following the definition “Part”;
- (g) the substitution in Regulation 1.1 for the definition “representative” of the following definition:

“**representative**’ means a natural person employed –

- (a) by or working for an insurer and receiving or entitled to receive remuneration; and
- (b) for the purpose of rendering services as intermediary in relation to the policies entered into or to be entered into by the insurer only;”;
- (h) the deletion in Regulation 1.1 of the definition “Schedule”;
- (i) the deletion in Regulation 1.1 of the number preceding and the number following the definition “section”; and
- (j) the substitution in Regulation 1.1 for the definition “services as intermediary” of the following definition:

“‘services as intermediary’ means any act performed by a person –

- (a) the result of which is that another person will or does or offers to enter into, vary or renew a policy; or
- (b) with a view to –
 - (i) maintaining, servicing or otherwise dealing with;
 - (ii) collecting or accounting for premium payable under; or
 - (iii) receiving, submitting or processing claims under, a policy.”.

4. Part 3 of the Regulations is hereby deleted.

5. Part 4 of the Regulations is hereby amended by the substitution for that Part of the following Part:

**“PART 4
AUTHORISATION OF AND REQUIREMENTS FOR COLLECTION OF
PREMIUMS BY INTERMEDIARIES
(SECTION 45)**

Authorisation

4.1(1) Any authorisation referred to in section 45 provided by an insurer to an independent intermediary to receive, hold or in any other manner deal with a premium payable under a policy of that insurer must be in writing and must, amongst other things -

- (a) specify the duration of the authorisation and the functions that may be performed under the authorisation;
- (b) specify the commission payable by the insurer to the independent intermediary for the services rendered under the authorisation;
- (c) specify the level and standard of services that must be rendered in terms of the authorisation;
- (d) specify the operational requirements that the independent intermediary must meet at all times to render services under the authorisation;
- (e) provide for the type and frequency of reporting by the independent intermediary on the services rendered under the authorisation; and
- (f) provide for the manner in and the means by which an insurer will monitor the independent intermediary's performance under and compliance with the authorisation.

(2) An independent intermediary may not delegate an authorisation that has been granted to it in accordance with section 45.

(3) An insurer may not authorise more than one independent intermediary to receive, hold or in any other manner deal with a premium in relation to the same policy if it is a policy forming part of personal lines business.

(4) An insurer must, before it authorises an independent intermediary under section 45, and at all times thereafter, be satisfied that –

- (a) the independent intermediary has the necessary operational ability to satisfactorily perform the functions or activities contemplated in the authorisation;
- (b) such authorisation will not materially increase risk to the insurer; and
- (c) such authorisation will not compromise the fair treatment of or continuous and satisfactory service to policyholders.

(5) An insurer must on an ongoing basis monitor whether an independent intermediary authorised under section 45 receives, holds or in any other manner deals with premiums in accordance with the authorisation and in accordance with this Part.

(6) An insurer must have appropriate contingency plans in place to address any shortcomings in the intermediary's performance of the authorised functions that it may identify through the monitoring contemplated in subregulation (5) or otherwise become aware of.

Requirements relating to receiving premiums

4.2(1) The payment of a premium to an independent intermediary authorised under section 45 to receive a premium is deemed to be a payment to the insurer under the policy concerned.

(2) An independent intermediary who receives premiums must account for such premiums properly and promptly and open and maintain one or more separate bank accounts designated for receiving and remitting premiums only.

(3) All premiums received by an independent intermediary –

- (a) through electronic means must be received into a bank account referred to in subregulation (2); or
- (b) in cash must be deposited into a bank account referred to in subregulation (2) within 2 business days after a premium is received.

(4) When an independent intermediary receives a premium in cash, that independent intermediary must as soon as reasonably practicable after receiving the premium give to the payer a written receipt for the premium received containing the name, address and telephone number of the recipient, the policy number and the name of the insurer on whose behalf the premium is received.

(5) A premium received or deposited into a bank account in accordance with subregulation (3) may only be transferred to the insurer for whom the premium is intended and may not be utilised or transferred for any purpose other than remitting the premium to the insurer concerned.

(6) An independent intermediary must within a period of 15 days after the end of every month, pay to the insurer concerned the total amount of the premiums received during that month.

(7) Despite subregulation (6), an independent intermediary may, subject to the insurer's authorisation, prior to paying the total amount of the premiums received to the insurer reduce that amount by the value of –

- (a) any refund of premiums due and payable by the insurer to any policyholder or prospective policyholder represented by such independent intermediary; and
- (b) any consideration payable to that independent intermediary by the insurer for rendering services as intermediary in respect of the policies concerned.

(8) If more than one independent intermediary is authorised by an insurer to receive premiums in relation to the same policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the insurer shall not exceed the period contemplated in subregulation (6).

Returns

4.3(1) An independent intermediary who has been authorised under section 45 must in respect of every month in respect of which the authority is in force, furnish the insurer concerned with returns –

- (a) in the form required by that insurer;
- (b) containing information relating to at least the premiums received, the commission payable to that intermediary and the amounts paid to the insurer; and
- (c) within a period of 15 days after the end of the month concerned.”.

6. Part 5 of the Regulations is hereby amended by -

- (a) the substitution for Regulation 5.2 in Part 5A for the following regulation:

“Time and payment of commission

5.2 Commission shall not be paid or accepted before the date on which the premium in respect of which it is payable has been paid to the insurer.”;

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

“Maximum commission payable

5.3(1) No commission shall exceed, in respect of -

- (a) a motor policy and a policy underwritten under the “Motor” class of non-life insurance business as set out in Table 2 of Schedule 2 of the Insurance Act, 12,5 per cent of the premium payable under the policy;

- (b) a contract identified in category 1, 2 and 3 in the table under regulation 7.2(1) of the Regulations, the maximum commission specified in column two of the Scale below (in relation to the monthly premium band specified in column 1); and
 - (c) any other policy, 20 per cent of the premium payable under the policy;
 - (d) Paragraphs (a), (b) and (c) do not apply to a policy underwritten by a microinsurer.”;
- (c) the substitution for Regulation 5.4 in Part 5A of the following regulation:

“Reversal of commission

5.4 If a premium or any part thereof is for any reason refunded by an insurer, the commission payable in terms of this Part in respect of that premium, or the part of that premium, which is so refunded, shall be refunded, to the insurer by the person to whom it was paid.”;

- (d) the substitution for Regulation 5.5 in Part 5A of the following regulation:

“Commission when policy comprises combination of policies

5.5(1) If a policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1, the maximum commission payable shall be determined by aggregating the maximum payable in terms of this Part in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the maximum shall not exceed that which would have been payable had the policy been the kind of policy to which the lowest maximum rate of commission applies.

(2) Despite sub-regulation (1), if a policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1 and one of the policies is a contract referred to in category 1, 2 or 3 in the table under regulation 7.2(1), the maximum commission payable shall be determined by aggregating the maximum payable in terms of this Part in respect of each of the separate kinds of policies comprising the combination by reference to the premium payable for each such policy, and if the premium attributable to each component is not specified in or ascertainable from the policy, the maximum commission payable for the whole of the policy shall not exceed the maximum commission allowable under Scale in Regulation 5.3(1).”;

- (e) the substitution in paragraph (2) in Regulation 5.6 in Part 5B for the definition “cell structure” of the following definition:

“‘**cell structure**’ has the meaning assigned to it in section 1 of the Insurance Act.”; and

- (f) the substitution for Regulation 5.10 in Part 5C of the following regulation:

“Definitions

5.10 In this Part 5C “binder function” has the meaning assigned to it in Part 6.”.

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

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

“**commercial lines business**’ means short-term insurance business other than in respect of personal lines business;”;

- (b) the substitution in Regulation 6.1 for the definition “governing body” of the following definition:

“**governing body**’ has the meaning assigned to it in section 1 of the Financial Sector Regulation Act, 2017 (Act No. 9 of 2017);”;

- (c) the substitution in Regulation 6.1 for the definition “insurer” of the following definition:

“**insurer**’ means a short-term insurer but excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);”;

- (d) the substitution in Regulation 6.1 for the definition “policy” of the following definition:

“**policy**’ means a policy other than a short-term reinsurance policy;”;

- (e) the insertion in Regulation 6.1 after the definition “this Part” of the following definition:

“**transformation in the insurance sector**’ has the meaning assigned to it in section 1 of the Insurance Act;”;

- (f) the insertion after paragraph (q) in subregulation (1) in Regulation 6.3 of the following paragraph:

“(qA) must provide for mechanisms and measures that will assist the insurer in meeting procurement, enterprise and supplier development targets relating to the transformation in the insurance sector;”.

8. Part 8 of the Regulations is hereby amended by the substitution for that Part of the following Part:

**“PART 8
TITLE AND COMMENCEMENT**

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

8.2 The amendments to the Regulations, subject to subregulation 8.3, take effect on 2 July 2018.

8.3 Despite regulation 8.2, the following amendments made to the Regulations through Government Notice 1439 as published in Government Gazette 41334 on 15 December 2017 take effect as follows –

- (a) insertion of subregulations (2) and (3) in regulation 5.8 in Part 5B takes effect –

- (i) on the effective date for binder agreements entered into on or after the effective date;
- (ii) for binder agreements entered into after 1 January 2017 but before the effective date, the earliest of –
 - (aa) 6 months after the effective date; or
 - (bb) the date on which any amendment to binder fees payable under such binder agreement is made;
- (iii) for binder agreements entered into before 1 January 2017, the earliest of –
 - (aa) 12 months after the effective date; or
 - (bb) the date on which any amendment to binder fees payable under such binder agreement is made;
- (b) insertion of subregulation (2) in regulation 6.2A in Part 6 takes effect 24 months after the effective date; and
- (c) amendment to paragraph (p) in subregulation (1) in regulation 6.3 in Part 6 takes effect 24 months after the effective date.

8.4 For purposes of regulation 8.3 “effective date” means 1 January 2018.”.