



DIRECTIVE
FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA

LONG-TERM INSURANCE ACT, 1998 (ACT 52 OF 1998)
SHORT-TERM INSURANCE ACT, 1998 (ACT 53 OF 1998)

Addressee:	Long-term and short-term insurers & Lloyd's	File:	10/17/1 & 10/14/1 & 10/7/1/11/1		
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3 rd	-	-	-	-	-
Subject:	Placement of insurance outside the Republic				

1. Introduction

The placement of insurance outside the Republic is governed by the Long-term and Short-term Insurance Acts, 1998 and the Exchange Control Regulations. The effect of these measures is explained below.

2. Primary insurance

Performance of certain acts by certain persons -

2.1 in terms of section 8(3) of the Long-term Insurance Act or section 8(2) of the Short-term Insurance Act

- (a) No person shall perform any act in terms of section 8(3) of the Long-term Insurance Act the object of which is or which results in –
 - (i) another person entering into or offering to enter into a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party; or
 - (ii) (aa) the surrendering of, or collecting of or accounting for premiums payable under;

- (ab) the receiving or submitting of, or assisting or otherwise dealing with, the settlement of a claim under; or
 - (ac) the maintaining, servicing or otherwise dealing with, a long-term policy, other than a reinsurance policy, to which a long-term insurer is not a party, without the consent of the Registrar, given either generally or in a particular case.
- (b) No person may render services as an intermediary in relation to a short-term policy in terms of section 8(2)(d) of the Short-term Insurance Act unless such person does so with the approval of the Registrar.

“services as intermediary” is defined in the Short-term Insurance Act as any act performed by a person –

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

2.2 in terms of the Exchange Control Regulations

- (a) If a person placed primary insurance directly abroad other than in terms of the provisions of section 8(3) of the Long-term Insurance Act or 8(2) of the Short-term Insurance Act, that placement must have been approved by the Exchange Control Authorities. Directly means that no intermediary services were rendered as defined above.
- (b) The establishment of short-term captive insurance companies abroad requires the prior approval of the Exchange Control Department of the South African Reserve Bank. Permission is also required to remit insurance premiums to such captives. Any such request to the Exchange Control Department must contain full particulars of the insurance to be transacted and be accompanied by a duly completed form M.P.I. It will be a requirement that the local short-term insurance market be given the opportunity to provide maximum cover.

3. Policy that will be followed by the Financial Services Board

By giving statutory recognition to facilities for placing primary insurance and reinsurance business abroad, the Legislature never intended that such recognition should have the effect of depriving registered long-term and short-term insurers of their rightful share of direct and reinsurance business which originate in the Republic. It is clearly in the interests of the economy of the Republic that registered long-term and short-term insurers should be given the opportunity of providing the maximum cover compatible with the observance of sound insurance principles. The Registrar, therefore, expects registered long-term and short-term insurers and Lloyd's correspondents to make their contribution towards the development of the local insurance market by exploiting its capacity to the full before turning to markets abroad.

In line with this policy the Registrar, in cases where insurance can be placed with registered long-term and short-term insurers at rates and on other terms and conditions which are significantly less favourable than those offered by foreign insurers, will grant approvals in terms of section 8(3) of the Long-term Insurance Act and section 8(2)(d) of the Short-term Insurance Act only if the Registrar is satisfied that registered insurers have been allocated such proportions of the risks concerned as they can normally accept in accordance with the principles outlined above. A differential of 25% or more in the premium rate will be viewed as significant.

As the only exceptions to this general rule the Registrar will be prepared to give consideration to allowing the placement with foreign insurers –

- (a) of such minor percentages of extra-ordinary large risks as are considered necessary to enable the insureds concerned to maintain contact with the non-registered insurers for commercial or strategic reasons.
- (b) in special cases of long-term insurance risks of insureds who resides abroad.
- (c) of short-term insurance that is arranged by an offshore holding company which requires the participation of the local subsidiary company. The so-called "global policies" will only be allowed on receipt of written confirmation from the holding company.

4. Reinsurance

4.1 Apart from the provisions of section 8(2) of the Short-term Insurance Act and the definition of "approved reinsurance policy" in paragraph 1 of Schedule 3 to the Long-term Insurance Act and the Exchange Control Regulations, there are no statutory restrictions on the placement by registered long-term and short-term insurers of their reinsurances outside the Republic. Attention is however also drawn to the definition of "approved reinsurance policy" in section 1(1) of the Short-term Insurance Act.

- 4.2 “approved reinsurance policy” in paragraph 1 of Schedule 3 to the Long-term Insurance Act means, among others, for purposes of calculating the contingent liabilities of a long-term insurer under unmaturing long-term policies in terms of which the policy benefits are to be provided -
- (i) in the Republic, any proportional reinsurance policy in terms of which the reinsurer is liable for the liabilities under unmaturing policies which remain in force until the contingent liability under unmaturing policies has expired, entered into by the long-term insurer with, among others, -
 - (aa) another insurer approved by the Registrar to the extent and subject to the conditions determined by the Registrar.
- 4.3 Applications by onshore short-term captive insurance companies to remit premiums in respect of the placement of reinsurance abroad, must be submitted to the Exchange Control Department of the South African Reserve Bank. Such applications must contain full particulars of the reinsurance to be transacted and documentary evidence. It will be a requirement that the local short-term insurance market be given the opportunity of providing cover.

5. Application for approval

- 5.1 Application for approval in terms of section 8(3) of the Long-term Insurance Act and section 8(2)(d) of the Short-term Insurance Act must be made on the application forms required in terms of section 3(2)(a) read with aforementioned sections of the Long-term and Short-term Insurance Acts.
- 5.2 Application for approval in terms of the definition of “approved reinsurance policy” in paragraph 1 of Schedule 3 to the Long-term Insurance Act must be made on the application form required in terms of section 3(2)(a) read with paragraph 1 of Schedule 3 to the Long-term Insurance Act.
- 5.3 The forms are available on the website (www.fsb.co.za) of the Financial Services Board (FSB).

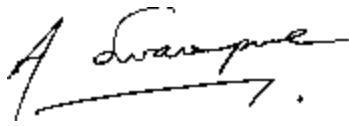
6. Offences and penalties

- 6.1 Any person who induces or attempts to induce any person to place his/her/its insurance outside the Republic in contravention of the provisions outlined in paragraph 2.1 in the case of section 8(3) of the Long-term Insurance Act and section 8(2) of the Short-term Insurance Act is guilty of an offence and liable on conviction to a fine not exceeding R1 000 000 or to imprisonment for a period not exceeding ten years or both to such fine and imprisonment (*vide* section 66(2) of the Long-term Insurance Act and section 64(2) of the Short-term Insurance Act).

6.2 Any insurer, by virtue of an approved reinsurance policy referred to in paragraph 4, who contravenes or fails to comply with a condition in section 30 or 31 of the Long-term Insurance Act and section 29 or 30 of the Short-term Insurance Act is guilty of an offence and liable on conviction to a fine not exceeding R1 000 000.

7. Information sharing

This directive is available on the website (www.fsb.co.za) of the FSB. Insurers must bring this directive to the attention of their appointed auditors and statutory actuaries.



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