



**FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA**

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

Addressee:	Short-term insurers & Lloyd's		File:	10/5/5/B & 10/14/1	
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Subject:	Placement of short-term insurance business with entities not registered in South Africa to conduct insurance business				

1. PURPOSE

The purpose of this directive is to set out –

- 1.1 the process and procedure associated with placing insurance outside the Republic of South Africa (“the Republic”) through an intermediary; and
- 1.2 the circumstances under which (and the procedural requirements associated therewith) South African policyholders may place insurance directly outside the Republic.

2. PROCESS AND PROCEDURE FOR PLACING INSURANCE OFFSHORE THROUGH AN INTERMEDIARY

2.1 Legislative framework¹

Sections 8(2)(a), (b) and (c) of the Short-term Insurance Act (“the Act”) provide that

¹ This Directive must be read with Directive 55.A.i.

no person may render services as an intermediary² in relation to a short-term policy³ unless that policy is underwritten by a short-term insurer or a Lloyd's underwriter (through a Lloyd's correspondent) or the Registrar of Short-term Insurance ("the Registrar") has granted approval under section 8(2)(d) of the Act for the rendering of such services.

2.2 Policyholder protection

2.2.1 An application under section 8(2)(d) of the Act must simultaneously be submitted to the Registrar and the South African Insurance Association ("SAIA") via the Offshore Insurance Placement system (the "OSIP" system) at www.osip.co.za. A user manual is available on the system.

Intermediaries that are not members of Financial Intermediaries Association of Southern Africa ("FIA") must also utilise the OSIP system by registering on the system at www.osip.co.za.

The rationale for also submitting an application to SAIA is to endeavour to protect South African policyholders⁴. It also affords an opportunity to the South African insurance industry to offer the insurance locally. SAIA assists the Registrar in assessing if the insurance is available locally and at competitive rates.

If no registered short-term insurer offers the insurance sought or offers it at competitive terms and conditions and/or the potential policyholder provides reasonable grounds for wanting to place the insurance with an entity outside of the Republic, then the granting of the section 8(2)(d)-application will be favourably considered.

2.2.2 An application under section 8(2)(d) of the Act must be accompanied by a declaration by the potential policyholder that the policyholder is aware that if the application is granted, the policyholder is not afforded any protection under the Act in respect of such insurance and that the foreign insurer does not have assets available in South Africa to cover its liabilities.

2.3 Hold-covered arrangements

An intermediary may enter into a "hold-covered" arrangement⁵ with an offshore

² Note that any person that intermediates or advises on the placement of insurance is subject to the Financial Advisory and Intermediary Services Act No. 37 of 2002 ("FAIS Act") and must therefore be licensed to provide such services in South Africa.

³ Subsection (2) and (3) shall not apply in the case of a short-term reinsurance policy unless and to the extent that the Minister so determines by notice in the *Gazette*. Such a determination has not been made.

⁴ South African policyholders whose insurance is placed off-shore are not protected under the Act as such insurance falls outside the scope and jurisdiction of the Act.

⁵ For the purposes of this Directive, a "hold-covered arrangement" is defined as an interim and limited-in-time basis policy under which the legal liability of an insurer under that policy automatically lapses after a maximum period of 30 working days, unless the Registrar's approval under section 8(2)(d) is secured.

insurer(s) for a maximum period of 30 working days⁶ from the inception date of the hold-covered arrangement pending approval under section 8(2)(d) of the Act.

2.4 Application process and procedure

2.4.1 An application must be made on the application form that is published on the official website of the Financial Services Board and submitted via the OSIP system. The application must be submitted not less than 15 working days prior to the date on which the insurance will be effective or renewed, or the hold-covered arrangement will expire.

The Registrar, SAIA and all the insurers registered on the OSIP system will simultaneously review the application and, where necessary, independently forward their respective queries to the intermediary.

2.4.2 It is important to note that, except for a hold-covered arrangement as outlined in paragraph 2.3, no premium may be paid to an offshore insurer prior to the granting of approval of an application by the Registrar. The payment of a premium prior to the granting of approval by the Registrar constitutes a contravention of section 8(2)(d), which contravention cannot (in law) be ratified by the granting of an extension of time for the submission of an application or otherwise.

2.4.3 The following process and maximum timelines apply on submission of the application:

Day 1:	Application submitted via the <i>OSIP</i> system.
Day 2:	<ul style="list-style-type: none"> ▪ Insurers registered on the <i>OSIP</i> system must review and query the application within 5 working days (commencing on the working day following the day 1). ▪ An insurer registered on the <i>OSIP</i> system that is of the view that it was not given a reasonable opportunity to offer the insurance, may advise the relevant intermediary accordingly in an attempt to resolve the matter before the expiry of the 5-day period. ▪ If no query is lodged within 5 working days, the Registrar will proceed with processing the application. ▪ If a query is lodged, the Registrar will consider the query in the processing of the application.
Day 7:	The Registrar will grant or reject the application within 7 working days (commencing on the working day following the expiry of the 5-day period referred to above).
Day 14:	The Registrar will inform the intermediary and any insurer that queried the application of his or her decision to grant or reject the application.

⁶ For purposes of this Directive, working days excludes any Saturday, Sunday or official public holiday.

Day 15:	The intermediary must inform the client and the relevant offshore insurer of the Registrar's decision.
Within 30 working days of inception of the cover approved by the Registrar	The intermediary must submit via the <i>OSIP</i> system the required information as contained in "Section B - Post Approval Information" of the application form.

2.5 Important information relating to the application process and procedure

2.5.1 All correspondence relating to an application will be electronic.

2.5.2 Only applications submitted via the *OSIP* system will be considered.

2.5.3 No late submissions of applications will be considered.

2.6 Prescribed application fee

An application must be accompanied by the prescribed application fee⁷. No application will be considered unless the prescribed fee has been paid.

2.7 Exemption for entities in South Africa that are part of an international group to canvas the South African market

Where an intermediary is rendering services to a policyholder that is a South African subsidiary of an international group that is required to participate in the insurance programme of the international group, it is not required to prove that no registered short-term insurer offers the insurance sought if proof of this obligation is provided.

3. CIRCUMSTANCES UNDER WHICH AND THE PROCEDURAL REQUIREMENTS ASSOCIATED WITH SOUTH AFRICAN POLICYHOLDERS PLACING INSURANCE DIRECTLY OFFSHORE

3.1 Where a potential policyholder places insurance directly with an offshore insurer

3.1.1 The direct placement of insurance (other than through an intermediary) with an offshore insurer by a potential policyholder is subject to the approval of the South African Reserve Bank ("SARB") under the Exchange Control Regulations.

3.1.2 The SARB, before approving the placement, refers a request for approval to the Registrar for a recommendation.

⁷ The fee is published in the *Government Gazette* from time to time.

3.1.3 A request for approval must be accompanied by –

- a confirmation by the South African potential policyholder that the policyholder is aware that the policyholder is not afforded any protection under the Act in respect of such insurance (other than in respect of a short-term policy¹ underwritten by a Lloyd's underwriter²) and that the foreign insurer does not have assets available in South Africa to cover its liabilities; and
- proof that no registered short-term insurer offers the insurance sought or offers it at competitive terms and conditions and/or that the potential policyholder has reasonable grounds for wanting to place the insurance with an entity outside of the Republic.

3.1.4 South African subsidiaries of international groups that are required to participate in the insurance programme of the international group are not required to prove that no registered short-term insurer offers the insurance sought if proof of this obligation is provided.

3.2 Where a policyholder places insurance directly with a foreign intermediary without the involvement of a local intermediary

If a potential policyholder places business offshore, not utilising the services of a local intermediary, and pays the premium directly to a foreign intermediary (and not directly to the offshore insurer), that intermediary must be registered under the Financial Advisory and Intermediary Services Act (Act No. 37 of 2002) and must submit an application in respect of that insurance under section 8(2)(d) of the Act.

4. INFORMATION SHARING

This directive is available on the website (www.fsb.co.za) of the FSB.



REGISTRAR OF SHORT-TERM INSURANCE

¹ "short-term policy" as defined in paragraph 1(1)(a) of Schedule 3 made under section 60 of the Short-term Insurance Act, 1998.

² "Lloyd's underwriter" as defined in section 1(1) of the Short-term Insurance Act, 1998.