



CENTRIQ

INSURANCE INNOVATION

UPDATE ON REGULATORY STATUS

INSURANCE LAW AMENDMENT ACT (ILAA)

<p>UPDATE</p>	<p>The Minister of Finance published the amended draft binder regulations ("the Binder Regulations") made under section 72(1) (gA) of the Long-term Insurance Act, 1998 and section 70(1) (gA) of the Short-term Insurance Act, 1998, respectively. The public have been invited to submit comments to National Treasury before the 5th of September 2011. It is therefore expected that the final Binder Regulations will only be promulgated towards the end of 2011 or the beginning of 2012.</p>
<p>LEGAL STATUS / REGULATIONS</p>	<p>Various amendments have been effected to the first draft of the binder regulations, all of which are acceptable.</p> <p>In terms of the Binder Regulations, binder agreements must now also specify the capacity in which the binder holder renders the binder services, namely as non-mandated intermediary, underwriting manager or administrative financial services provider.</p> <p>The Binder Regulations also provide further provisions regarding the termination of binder agreements to ensure the successful winding-up of the binder relationship. The insurer's duty to disclose the termination of a binder relationship to the Registrar has also been extended from a 30 day period to a 60 day period.</p> <p>The most significant amendment in terms of the Binder Regulations affects underwriting managers in both the short-term and long-term insurance industries. The definition of an underwriting manager for purposes of the Binder Regulations has been amended substantially and is now defined as a person that performs one or more of the binder functions referred to in section 49A of the Long-term Insurance Act, 1998 and section 48A of the Short-term Insurance Act, 1998, and if that person renders services as an intermediary (as defined in Part 3A of the Regulations), (i) such person does not perform any act directed towards entering into, maintaining or servicing a policy on behalf of an insurer, a potential policyholder or policyholder; and (ii) renders those services (other than the services referred in paragraph (i)) to or on behalf of an insurer only; and provided that person is not an associate of a mandated or non-mandated intermediary, a representative of a mandated or non-mandated intermediary, or an administrative financial services provider.</p> <p>As regards an underwriting manager operating in the long-term insurance environment, the Binder Regulations now prohibit an underwriting manager from being a binder holder of more than one insurer, unless the relevant insurers have agreed to such multiple binder relationships in writing. This limitation is no longer limited only to certain kinds of policies but to binder services per se. The same does not apply to the short-term insurance industry and an underwriting manager is only prohibited from being a binder holder of various insurers in respect of the same class of policies as defined in section 1 of the Short-term Insurance Act, 1998, unless the relevant insurers have agreed to such other binder relationships in writing.</p> <p>The memorandum to the draft Binder Regulations also expressly states that the underwriting manager acts as agent on behalf of the insurer and can therefore not solicit policies from, or market or sell policies to, the public or any segment of the public on behalf of an insurer.</p> <p>The memorandum to the draft Binder Regulations also addresses the concerns raised by non-mandated intermediaries, administrative financial services providers and underwriting managers with regards to the protection of commercially sensitive information from an insurer. It provides that "a policy constitutes a contract between the policyholder and the insurer under which the insurer has the responsibility to provide policyholder benefits. A non-mandated intermediary or underwriting manager is not a party to that contract and, as binder holder, acts on behalf of the insurer. A non-mandated intermediary or underwriting manager therefore has no right to withhold information." This statement makes it abundantly clear that a policyholder's data does not belong to any party other than the insurer with whom the policyholder has a valid and binding agreement and the binder holder merely, in its capacity as agent of the insurer, renders the binder services in relation to such policies and policyholders.</p>
<p>DATE ASSENTED BY THE PRESIDENT</p>	<p>Date of Gazetting - 15 December 2008.</p>
<p>EFFECTIVE DATES</p>	<p>2008</p>