national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

EXPLANATORY DOCUMENT SUPPORTING CONSULTATION

AMENDMENT OF THE REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998 AND SHORT-TERM INSURANCE ACT, 1998

December 2016

Contents

PART I: INTRODUCTION

1. BACKGROUND

Over the last few years a number of regulatory reform initiatives focussed on conduct of business have been undertaken and consulted on. Certain of these reforms are necessary in the short-term (pending Phase 2 of Twin Peaks that will see all market conduct requirements centralised in a planned Conduct of Financial Institutions ("CoFI") Bill) to address existing conduct of business risks and abuses. For this reason the implementation of these reforms cannot be deferred to the enactment of the proposed CoFI Bill.

These regulatory conduct of business reforms will be given effect to through the Regulations made by the Minister of Finance and the Policyholder Protection Rules ("PPRs") made by the Registrar of Long-term and Short-term Insurance ("the Registrar") under the Long-term Insurance Act, 1998 ("LTIA") and the Short-term Insurance Act, 1998 ("STIA").

2. INSURANCE REGULATORY REFORMS IN THE CONTEXT OF TWIN PEAKS

Phase 1 of Twin Peaks will see the establishment of two new regulators – a Prudential Authority ("PA") in the South African Reserve Bank, responsible for prudential supervision of banks, insurers, financial market infrastructure and financial conglomerates; and a Financial Sector Conduct Authority ("FSCA") with responsibility for market conduct supervision of financial product and services providers.

The establishment of a PA and FSCA will be supported by a reorganisation of insurance legislation: prudential supervision of insurance will be dealt with in the new Insurance Bill (once enacted), while market conduct supervision will continue to be dealt with in the LTIA and the STIA, until such time that the CoFI Bill is enacted.

As stated above, in Phase 2 of Twin Peaks, all market conduct requirements will be centralised in a planned CoFI Act.

As illustrated below, the LTIA and STIA (as to be amended by the Financial Sector Regulation Bill and the Insurance Bill) will constitute the conduct of business regulatory framework for insurance pending the enactment of the CoFI Bill:

	PRUDENTIAL		MARKET CONDUCT	
	PRIMARY	SECONDARY	PRIMARY	SECONDARY
CURRENT	LTIA STIA	Board Notices Insurance Notices Regulations	LTIA STIA	Board Notices Insurance Notices Policyholder Protection Rules Regulations
TWIN PEAKS PHASE 1	Insurance Act	Prudential Standards	LTIA STIA	Insurance Notices Policyholder Protection Rules Regulations
TWIN PEAKS PHASE 2	Insurance Act	Prudential Standards	CoFI Act	Conduct Standards

3. CONDUCT OF BUSINESS REGULATORY REFORMS TO BE GIVEN EFFECT TO IN TRANCHES

The Phase 1 insurance conduct of business reforms will be given effect to in two tranches during the course of 2016 and 2017:

TRANCHE	AMENDMENTS PROPOSED IN TRANCHE	TIMING OF DRAFTING
Tranche 1	Give effect to a number of conduct of business reforms that can be given effect to within the existing regulatory framework through the Regulations and PPRs	December 2016 to April 2017
Tranche 2	▪ Ensure alignment with the Insurance Bill, 2016[1] that will provide a consolidated legal framework for the prudential supervision of insurers, to ensure that the prudential and conduct of business regulatory frameworks are aligned and can be implemented collectively[2] ▪ Give effect to a number of conduct of business reforms that in order to be given effect to through the Regulations and PPRs require amendment to the LTIA and STIA. The latter is necessary to ensure that the conduct of business regulatory framework for insurance remains robust pending the enactment of the CoFI Bill. These amendments will be provided for in Schedule 1 to the Insurance Bill[3]	To commence once parliamentary consideration of the Insurance Bill has made substantial progress and to be finalised on the commencement date of the Insurance Bill

This document sets out the amendments to the Regulations made under the STIA and LTIA **in Tranche 1 only**.

The Registrar will publish, for consultation, a separate document that sets out the amendments to be made to the PPRs in Tranche 1.

4. SCOPE OF TRANCHE 1 CONDUCT OF BUSINESS REGULATORY REFORMS: REGULATIONS AND PPRs

The Tranche 1 regulatory conduct of business reforms that will be given effect to through the Regulations and the PPRs relate to -

- the *Retail Distribution Review*, specifically the *Status Update: Retail Distribution Review Phase 1* published on 10 November 2015 ("RDR Phase 1");
- the *Complaints Management Discussion Document* published in October 2014 and the *Complaints Management Thematic Review* published on 17 October 2014 ("the Complaints Management Proposals");
- draft amendments to the *Binder Regulations* that were published on 11 July 2014 for public comment until 1 September 2014, the finalisation of which was deferred until the publication of the detailed Retail Distribution Review Phase 1 proposals ("proposed Binder Regulations");

[1] The Insurance Bill was tabled in Parliament on 28 January 2016.
[2] These amendments will primarily focus on alignment with the terminology used in the Insurance Bill, alignment with the authorisation classes (segmentation) introduced by the Insurance Bill and accommodation of the transitional period of two years within which registered insurers will have to apply for licences under the Insurance Bill.
[3] In drafting the amendments to the Regulations and PPRs it became apparent that amendments, in addition to those mooted in Schedule 1 to the Insurance Bill as was tabled on 26 January 2016, to the remaining parts of LTIA and STIA are necessary to ensure that the conduct of business regulatory framework for insurance remains robust pending the enactment of the CoFI Bill. Additional amendments in the form of a revised Schedule 1 will therefore be proposed to Parliament when it considers the Insurance Bill. Amendments will also be proposed to ensure alignment with the Financial Sector Regulation Bill to the extent necessary.

- certain matters identified in the consultations on the *Technical Report on the Consumer Credit Market in South Africa* published on 3 July 2014, which signalled concerns with respect to consumer abuses in the consumer credit insurance market ("CCI proposals");

- the draft *Information Letter on Advertising, Brochures and Similar communications* published on 13 December 2013 for comments by 28 February 2014 ("the Advertising IL");

- appropriate minimum requirements for claims management ("Claims Management Proposals");

- additional critical protections for policyholders and insureds identified through supervision (principles to inform premiums and premium reviews, minimum data governance requirements and negative option marketing and the like);

- alignment with the International Association of Insurance Supervisor's Insurance Core Principles, November 2015, specifically ICP 19;

- certain proposals of the Ombud for Long-term Insurance and the Ombud for Short-term Insurance relating to improved policyholder protection ("Ombuds proposals");

- alignment, in certain respects, with the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002) ("FAIS Act alignment"); and

- closing of regulatory gaps identified in existing provisions, effect improvements to certain provisions and effect technical amendments to clarify the intent and purpose of certain provisions.

5. SCOPE AND TIMING OF, AND APPROACH TO, TRANCHE 1 REGULATORY FRAMEWORK CONDUCT OF BUSINESS REFORMS: REGULATIONS

5.1 Scope

The Tranche 1 regulatory conduct of business reforms that will be given effect to through the Regulations relate to -

- RDR Phase 1;

- the proposed Binder Regulations;

- the CCI proposals; and

- closing of regulatory gaps identified in existing provisions, effecting improvements to certain provisions and effecting technical amendments to clarify the intent and purpose of certain provisions.

5.2 Approach

The proposed amendments to the Regulations are not intended to constitute a comprehensive review of the existing Regulations. The proposed amendments focus only on giving effect to the conduct of business reforms referred to above.

A further, more comprehensive review of the Regulations will form part of the broader review of all conduct of business legislative frameworks across the various sectors regulated by the Financial Sector Conduct Authority that will be undertaken over the next two or so years as part of Phase 2 of Twin Peaks and the development of the CoFI Bill.

5.3 Timing

The targeted effective date of the Tranche 1 regulatory changes is 1 May 2017, with appropriate transitional provisions where necessary. It is envisaged that the Regulations will however be promulgated / made before this date to afford legal certainty. This will in turn afford insurers sufficient time to prepare for implementation.

6. STRUCTURE OF THIS DOCUMENT

This document supports consultation on the Tranche 1 regulatory changes that will be given effect to through the Regulations.

This document consists of 4 Parts:

Part I: Introduction

Part II: Amendments to the Regulations made under the Long-term Insurance Act, 1998 – This Part highlights each proposed amendment in tracked changes and provides an explanation of the purpose of the amendment

Part III: Amendments to the Regulations made under the Short-term Insurance Act, 1998 – This Part highlights each proposed amendment in tracked changes and provides an explanation of the purpose of the amendment

Part IV: Notes - Note 1: The approach adopted in respect of the definitions of “independent intermediary”, “representative” and “services as intermediary” - This document must be read with the Government Gazette on the amendment of the Regulations published by the Minister for comment.

7. CONSULTATION

Comments on the Insurance Regulations are invited from all interested stakeholders. Written comments should be sent to Dr. Reshma Sheoraj at ltregulations.insurance@treasury.gov.za (for the Long-term Insurance Regulations) or stregulations.insurance@treasury.gov.za (for the Short-term Insurance Regulations) or faxed to 012 315 5206 by **22 February 2017**.

PART II: AMENDMENTS TO THE REGULATIONS MADE UNDER THE LONG-TERM INSURANCE ACT, 1998

REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998 (ACT NO. 52 OF 1998)

Published under Government Notice R1492 in *Government Gazette* 19495 of 27 November 1998 and amended by:

GN R197	**GG 20934**	**1/3/2000**
GN R164	**GG 23105**	**15/2/2002**
GN R1209	**GG 25370**	**29/8/2003**
GN R1218	**GG 29446**	**1/12/2006**
GN R186	**GG 29681**	**1/3/2007**
GN R952	**GG 31395**	**5/9/2008**
GN R1077	**GG 34877**	**23/12/2011**
GN R170	**GG 38507**	**25/2/2015**

PART 1
INTERPRETATION

PART 2
LIMITATION ON ASSETS

PART 3
REMUNERATION

Comment [IRFD1]: Amended to align with section 49 of the LTIA as amended by the Financial Services Laws General Amendment Act, 2013 (the amendment will be made effective prior to the enactment of the Insurance Bill, 2016) that addresses all remuneration.

PART 3A
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - POLICIES OTHER THAN POLICIES TO WHICH PART 3B APPLIES

Comment [IRFD2]: Necessary to clarify that this subregulation applies to investment policies only. Facilitates the implementation of Proposal OO of RDR Phase 1. See new subregulation addressing replacement of risk policies.

Comment [IRFD3]: To give effect to Proposal OO of RDR Phase 1.

PART 3B
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009

Comment [IRFD4]: Necessary to clarify that this subregulation applies to investment policies only. Facilitates the implementation of Proposal OO of RDR Phase 1.

PART 3C
LIMITATION ON REMUNERATION FOR OUTSOURCING

Comment [IRFD5]: To limit the remuneration that may be paid in respect of policy data administration services and to facilitate the implementation of Proposals Z & AA of RDR Phase 1.

PART 3D
GENERAL PRINCIPLES FOR DETERMINING REMUNERATION

Comment [IRFD6]: Principles that insurers must apply when determining any remuneration have been introduced.

PART 4
LIMITATION ON PROVISIONS OF CERTAIN POLICIES

Comment [IRFD7]: To provide for the inclusion of a provision that provides that fees, penalties or any other charges imposed in respect of policy loans may not exceed what would have been imposed as causal event charges had the policy loan been a causal event.

PART 5
REQUIREMENTS AND LIMITATIONS REGARDING THE VALUES AND BENEFITS OF POLICIES

PART 5A
POLICIES OTHER THAN POLICIES TO WHICH PART 5B APPLIES

Comment [IRFD8]: Sub-regulation no longer necessary.

Comment [IRFD9]: Sub-regulation no longer necessary.

Comment [IRFD10]: To give effect to Proposal PP of RDR Phase 1.

Comment [IRFD11]: Principles that insurers must apply when calculating causal event charges in the case of multiple causal events have been introduced. Directive 153A.ii (LT) has largely been incorporated into this Part.

Comment [IRFD12]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.

Comment [IRFD13]: Sub-regulation moved to Part 3.

PART I

INTERPRETATION

1.1 Definitions

In these regulations "the Act" means the Long-term Insurance Act, 1998, any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and -

"insurer" means a long-term insurer;

"Part" means the applicable Part of these regulations;

"policy" means a long-term insurance policy and "insurance policy" has a corresponding meaning;

"Schedule" means the applicable Schedule to the Act;

Comment [IRFD14]: Definition moved to Part 2.

"section" means the applicable section of the Act.

PART 2
LIMITATION ON ASSETS
(Section 31)

2.1 Definitions

For the purposes of this Part and section 31 and, unless the context otherwise indicates -

"asset-holding intermediary", in relation to a long-term insurer, means an undertaking, other than a company the shares of which are listed on a licensed stock exchange in the Republic -

(a) which is a subsidiary of the long-term insurer or would be its subsidiary if that insurer were a company;

(b) the management of the investments of which is under de facto control of the long-term insurer; and

(c) which has assets which are regarded and dealt with, for all intents and purposes, as if they were the assets of the long-term insurer;

"associated company" means a company -

(a) which is an associate, as defined in section 26(5), of a long-term insurer;

(b) which exercises control, as defined in section 26(6), over a long-term insurer; or

(c) over which a long-term insurer exercises control as defined in section 26(6), other than a company which is an asset-holding intermediary or a property company;

"call option" means an option contract under which the holder of the option contract has the right but not an obligation, in accordance with the terms of the contract, to purchase (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the call option contract;

"convertible debenture" means a debenture which is convertible into equity shares of a company;

"equity shares" means equity shares as defined in section 1 of the Companies Act;

"linked policy" means a long-term policy in relation to which the liabilities of the long-term insurer are linked liabilities as defined in section 33(2);

"long position" means long position as defined in the rules of SAFEX;

"market value", in relation to an asset, means -

(a) in the case of an asset which is listed on a licensed stock exchange and for which a price was quoted on that stock exchange on the date as at which the value is calculated, the price last so quoted;

(b) in the case of an asset which is a long-term policy, the amount which on any day would be payable to the policyholder upon the surrender of the policy on that day;

(c) in any other case, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length, as estimated by the long-term insurer, or by the Registrar if the Registrar is not satisfied with that estimate;

"multiple" means the futures contract's unit of trading in its description;

"n.e.s." means not elsewhere specified in this Part;

"net loans" means the positive amount (if any) by which the aggregate amount of loans made by a long-term insurer to its asset-holding intermediary, exceeds the aggregate amount of loans made to it by that asset-holding intermediary;

"property company" means a company -

(a) whose ownership of -

(i) immovable property; or

(ii) all of the shares in a company

(aa) whose principal business consists of the ownership of immovable property; or

(bb) which exercises control, as defined in section 26(6), over a company whose principal business consists of the ownership of immovable property; or

(iii) a linked policy, to the extent that the policy benefits thereunder are determined by reference to the value of immovable property, constitutes, in the aggregate, 50 per cent or more of the market value of its assets;

(b) which derives 50 per cent or more of its income, in the aggregate, from -

(i) investments in immovable property;

(ii) investments in another company which derives 50 per cent or more of its income from investments in immovable property; or

(iii) a linked policy to the extent that the policy benefits thereunder are determined by reference to the value of immovable property; or

(c) which exercises control, as defined in section 26(6), over a company referred to in paragraph (a) or (b);

"put option" means an option contract under which the holder of the option contract has the right but not an obligation in accordance with the terms of the contract to sell (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the put option contract;

"rules of SAFEX" mean the rules of SAFEX referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

"SAFEX" means the South African Futures Exchange;

Comment [IRFD15]: Definition moved from Part 1 to here.

"shares" include share stock;

"short position" means short position as defined in the rules of SAFEX.

2.2 General limitation on assets

For the purposes of section 31 (1), a long-term insurer shall have as kinds specified in Schedule 1 having a market value which, when percentage of the aggregate value of the relevant liabilities of the long-term does not exceed the percentage specified in column 2 of the Table to t relation to the particular kinds or categories of assets specified in column Table.

2.3 Assets of asset-holding intermediary

For the purposes of regulation 2.2 the assets of the kinds set out in Schedule 1 of an asset-holding intermediary of a long-term insurer, other than a claim against that long-term insurer, shall be deemed to be assets of the long-term insurer

(a) in place of the net loans made by it to the asset-holding intern the extent determined in accordance with the formula -

$$\frac{A}{B} \times C$$

(b) in place of its shares, other than equity shares, in the ass intermediary, to the extent determined in accordance with the formula -

$$\frac{A}{B} \times D$$

(c) in place of its equity shares in the asset-holding intermediate extent determined in accordance with the formula -

$$\frac{E}{F} \times G$$

in which formulae -

A represents the market value of each asset or kind or category of asset in column 1 of the Table to this Part of the asset-holding intermediary)

B represents the aggregate market value of all the assets of the ass intermediary

C represents the amount of any claim arising from any net loans to the asset holding intermediary;

D represents the value of shares, other than equity shares, held by the long-term insurer in the asset-holding intermediary, plus or minus the amount to be apportioned to those shares by virtue of the excess or shortfall of the assets of the asset-holding intermediary over its liabilities;

E represents A minus the sum of the amounts determined in accordance with the formulae referred to in paragraphs (a) and (b);

F represents the value of the equity shares held by the long-term insurer in the asset-holding intermediary;

G represents the aggregate value of all equity shares of the asset-holding intermediary.

2.4 Liabilities of asset-holding intermediary

For the purposes of regulation 2.2, the liabilities of an asset-holding intermediary of a long-term insurer, other than a claim of the long-term insurer against that asset holding intermediary, shall be deemed to be liabilities of the long-term insurer to the extent determined in accordance with the formula

$$A \times \frac{B}{C}$$

in which formula-

A represents the aggregate value of those liabilities, plus the value of those of the shares, other than equity shares, in the asset-holding intermediary concerned, which are not owned by the long-term insurer concerned;

B represents the value of the equity shares held by the long-term insurer in the asset-holding intermediary;

C represents the aggregate value of all equity shares of the asset-holding intermediary.

2.5 Deemed assets

For the purposes of regulation 2.2, there shall be deemed as assets of a long-term insurer, or, where appropriate, its asset-holding intermediary, in place of the market value of an asset thereof which is a linked policy, those assets of the particular kind of categories specified in Schedule 1 to the extent, in respect of each such particular kind or category, of an amount which bears the same proportion to the market value of the linked policy as each of those kinds or categories of assets by reference to the value of which the policy benefits are to be determined, is stated in terms of the policy (or, if not so stated, is estimated by the long-term insurer which is liable under the policy), bears to the total of all of the assets to which the policy is linked.

2.6 Futures contracts

(1) For the purposes of regulation 2.2, a futures contract shall be deemed to be the asset or kind of asset to which the futures contract relates. The exposure in consequence of concluding a futures contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned, and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of a purchased futures contract (long position) shall be added, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced, and the exposure arising from the use of a sold futures contract (short position) deducted from the particular asset or category of assets whilst the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased.

(2) The balance of any margin deposit shall be deemed to be an asset of the kinds, specified in items 2 and 16(5)(b) of the Table to Schedule 1.

(3) For the purposes of this regulation "exposure" means the number of contracts x multiple x current price, where the current price shall be the "mark-to-market" as defined in the rules of SAFEX on the reporting date.

2.7 Option contracts

(1) For the purposes of regulation 2.2, an option contract shall be deemed to be the asset or kind of asset to which the option contract relates. The exposure in consequence of concluding an option contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of an option contract that results in a positive holding shall be added to the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced. The exposure arising from the use of an option contract that results in a negative holding shall be deducted from the particular asset or category of assets, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased. A positive holding constitutes a call option bought (long call) and a put option sold (short put), and a negative holding constitutes a call option sold (short call) and a put option bought (long put).

(2) The balance of any margin shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

(3) For the purposes of this regulation "exposure" means the number of contracts x delta x the market value of the underlying asset or kind of assets where "delta" represents the change in option contract premium associated with one percentage point move in the market price of the underlying asset.

2.8 Other derivatives

Any derivative in relation to which no basis for valuation has been provided in regulation 2.6 or 2.7 shall be -

(a) deemed to be the asset or kind of asset to which the derivative relates; and

(b) valued as determined by the Registrar.

Table
CATEGORIES OF ASSETS
(Regulation 2.2)

In this Table particular items or groups of items referred to in Schedule 1, or particular kinds of assets failing within the more general description of those categories in Schedule 1, are specified in column 1. The maximum permitted holding of those specified assets, calculated according to their market value and expressed as a percentage of the liabilities concerned, is specified in column 2.

Asset limitation number	Column 1 Relevant Schedule 1 Item	Column 2 Percentage
01.	Ex item 1:	
01.01	Krugerrand coins - in the aggregate	10
02.	Ex items 2 and 18	
02.01	In the aggregate in respect of any one institution	20
02.02	In the aggregate in respect of margin deposits held with SAFEX	2,5
03.	Item 3:	
03.01	In the aggregate	20
04.	Ex item 6:	

04.01	In the aggregate in respect of any one body, council or institution	20
05.	Item 7:	
05.01	In the aggregate	20
06.	Item 8:	
06.01	In the aggregate	20
07.	Item 9:	
07.01	In the aggregate	20
08.	Item 10:	
08.01	In the aggregate	20
09.	Item 11:	
09.01	In the aggregate	20
10.	Ex item 12:	
10.01	In the aggregate in respect of any one body corporate	20
11.	Item 13:	
11.01	In the aggregate	20
12.	Ex items 14, 16(1), (2), (3) and (4), 17, 19(a) and 20:	
12.01	Immovable property, units in a unit trust scheme in property shares, loans or mortgage bonds to or shares or debentures or depository receipts or linked units or loan stock issued by a property company; and linked policies linked thereto -	
12.01.01	In the aggregate	25
12.01.02	In the aggregate in respect of any one property or property development project or property company	5
13.	Ex item 15:	
13.01	Computer equipment - in the aggregate	5
13.02	Other assets - in the aggregate	2,5
14.	Ex items 16(1), (2), (3) and (4), 17 and 20(a):	
14.01	Shares, convertible debentures or depository receipts or linked units or loan stock, issued by a body corporate, other than an asset-holding intermediary, n.e.s., and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto -	
14.01.01	In the aggregate	75
14.01.02	In the aggregate of those which are not listed on a licensed stock exchange or financial market in the Republic or are listed in the Development or Venture Capital Sectors of such an exchange or market	5
14.01.03	In the aggregate of those which are listed on a licensed stock exchange or financial market in the Republic, otherwise than in the Development or Venture Capital Sectors thereof, and which are issued by any one body corporate which has a market capitalisation -	
14.01.03.01	not exceeding R2 000 million	10
14.01.03.02	exceeding R2 000 million	15
15.	Ex items 16(1) and (2), 19(a) and 20(b) and (c):	
15.01	Loans to, and claims against, or debentures, other than convertible debentures, issued by, associated companies - in the aggregate	5
16.	Ex item 20(a):	
16.01	Claims under long-term policies other than linked policies -	
16.01.01	In the aggregate in respect of any one long-term insurer	20
17.	Ex items 16(1) and (2), 19(a) and 20(b) and (c):	
17.01	Claims against individuals, and claims against, loans to or debentures, other than convertible debentures, issued by, bodies corporate, n.e.s. -	
17.01.01	In the aggregate	25
17.01.02	In the aggregate in respect of any one individual	0,25
17.01.03	In the aggregate in respect of any one body corporate	5
18.	Ex item 16(5):	
18.01	Securities, shares, credit balances, deposits, units, margin deposits -	
18.01.01	In the aggregate	15
18.01.02	Ex item 16(5)(b):	
18.01.02.01	In the aggregate	15
18.01.03	Ex item 16(5)(d):	
18.01.03.01	In the aggregate in respect of margin deposits	2,5
18.01.04	Ex item 16(5)(a)(i):	
18.01.04.01	In the aggregate	15
18.01.05	Ex item 16(5)(a)(ii) and (c)	
18.01.05.01	In the aggregate	15
18.01.05.02	In the aggregate of shares, convertible debentures or depository receipts or linked units or loan stock which are listed in a regulated market in a country other than the Republic which the Registrar has approved or are listed in the Development or Venture Capital Sectors of a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate	5
18.01.05.03	In the aggregate of shares, convertible debentures or depository receipts or linked units or loan stock which are listed on a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate	

	incorporated outside the Republic which has a market capitalisation; and linked policies linked thereto -	
18.01.05.03.01	not exceeding R2 000 million	10
18.01.05.03.02	exceeding R2 000 million	15
18.01.05.04	In the aggregate of securities, other than convertible debentures or depository receipts or linked units or loan stock, which are listed in a regulated market in a country other than the Republic or on a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate in respect of any one body corporate	5
19.	Items 16(5)(d) and 18:	
19.01	In the aggregate in respect of margin deposits	2,5
20.	Ex items 14, 16(1), (2), (3), (4) and (5)(a)(ii) and (c) and 17:	
20.01	In the aggregate	90
21.	Ex items 14,15, 16(1), (2), (3), (4) and (5)(a)(ii) and (c), 17, 19 and 20:	
21.01	In the aggregate	95
21.02	In respect of any one asset the kind of which is not subjected elsewhere in this Table to a specific limitation	2,5

PART 3
REMUNERATION
(Section 49)

Comment [IRFD16]: For purposes of alignment with section 49 of the LTIA as amended by the Financial Services Laws General Amendment Act, 2013 (the amendment will be made effective prior to the enactment of the Insurance Bill, 2016), this part has been amended to apply to all remuneration.

PART 3A
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - POLICIES OTHER THAN POLICIES TO WHICH PART 3B APPLIES

[Heading of Part 3A inserted by GN R952/2008]

3.1 Application of this Part 3A, and definitions

[Heading substituted by GN R952/2008]

This Part 3A applies to policies, components and benefit components other than those to which Part 3B applies, and unless the context indicates otherwise -
[Sentence following heading substituted by GN R952/2008]

Comment [IRFD17]: To give effect to Proposal AAA of RDR Phase 1. Commission of 22.5% for credit life schemes "with administrative work" will be removed.
Proposal AAA: Commission cap for credit life insurance schemes with "administrative work" to be removed:
The provision in Part 3 of the regulations to the Long-term Insurance Act for an additional maximum commission level of 22.5% of premiums for credit life insurance schemes with "administrative work" will be removed. The effect of this will be that, pending further review of the regulatory framework for "group scheme" insurance policies, the maximum commission level for all credit life schemes will be the same (currently 7.5%), regardless of whether or not "administrative work" is carried out. The extent of additional remuneration available for any administrative work carried out by the intermediary will then be informed by the proposals elsewhere in this paper relating to binders, outsourcing or ongoing product servicing / maintenance, as the case may be.

"annualised premium", in relation to a group scheme or fund policy, means 12/m of the total premiums payable under the group scheme or fund policy during a scheme year, excluding transfer values inwards and credits arising in the group scheme or fund policy to employers of fund members in consequence of the withdrawal of members;

"benefit component" means each separately identifiable kind of policy benefit undertaken to be provided under a particular kind of policy;

"component" means a part of a policy, if any, where that part provides a policy benefit for which an identifiable, separate premium is payable;
[Definition of "component" inserted by GN R952/2008]

"compulsory", in relation to an annuity, means that there is an obligation in terms of the rules of a fund to enter into a policy which provides the annuity;

"credit scheme" means a group scheme under which every life insured is indebted to or a surety of the policyholder whose insurable interest as policyholder arises solely from that indebtedness or suretyship;

"fund member policy" means an individual policy -

(a) of which a fund is the policyholder;

(b) under which a specified member of the fund (or the surviving spouse, children, dependants or nominees of the member) is the life insured; and

(c) which is entered into by the fund exclusively for the purpose of funding that fund's liability to the member (or the surviving spouse, children, dependants or nominees of the member) in terms of the rules of that fund;

"group of companies" has the meaning defined in section 1 of the Companies Act;

Comment [IRFD18]: To facilitate the interpretation of the amendments to the definition of "representative".

"group scheme" means a scheme or arrangement which provides for the entering into of one or more policies, other than an individual policy, in terms of which two or more persons without an insurable interest in each other, for the purposes of the scheme, are the lives insured;

"immediate annuity" means an annuity that is paid under a policy, where the first payment period begins within 12 months after the policy has been entered into;
[Definition of "immediate annuity" inserted by GN R952/2008]

"independent intermediary" means a person, other than a representative, who renders services as intermediary;

Comment [IRFD19]: Aligned with the same term as defined in the regulations under the STIA. See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*".
Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

"individual policy" means a policy under which a particular person is the life insured, or two or more particular persons having an insurable interest in each other are the lives insured jointly;

"investment policy" means a policy other than a policy which is an 'excluded policy' as defined in Part 5A;
[Definition of "investment policy" substituted by GN R952/2008]

"m" means the number of months in a scheme year;

"multiple premium policy" means a policy under which the premium is payable in two or more amounts;

"policy" means a long-term policy other than a reinsurance policy;

"policy benefit" has the meaning assigned to it in the Act, but excludes a loan in respect of the policy, or a consideration payable upon the full or partial surrender of the policy;
[Definition of "policy benefit" inserted by GN R952/2008]

"Policyholder Protection Rules" means the Policyholder Protection Rules, 2016, promulgated by GN R. [----] of [--] [----] 2016;

Comment [IRFD20]: Facilitates the implementation of Proposal OO of RDR Phase 1. See new subregulation addressing replacement of risk policies. Reference will be inserted once the proposed amendments to the PPRs have been finalised.

"premium", in relation to a premium period, means the premium which is payable by a policyholder and received under that policy in respect of every separately identifiable benefit component of that policy;

Comment [IRFD21]: To clarify that commission is payable on gross premium, i.e. the premium as is payable by the policyholder.

"premium-paying term", in relation to a multiple premium policy, other than a group scheme or fund policy, means the whole period during which the several amounts of premium are payable, determined by reference to -

(a) the longer of -

(i) 10 years; or

(ii) the number of complete years in the period extending from the date of commencement of the first premium period of the policy to a date -

(aa) in the case of a fund member policy, 66 years; or

(bb) in any other case, 75 years, after the date of birth of the life insured under the policy; or

(b) if it is stated in or ascertainable from the written provisions of the policy at its commencement, and is a shorter period than that determined in accordance with paragraph (a), the shorter of -

(i) the particular limited period for which those several amounts of premium are expressed to be payable; or

(ii) the period during which those several amounts of premium must be paid before there shall or may -

(aa) be provided a policy benefit, otherwise than upon the death of, or upon the occurrence of a health event or a disability event in relation to a life insured under the policy; or

(bb) be paid, upon the surrender of the policy, consideration the amount of which is stated in or ascertainable from written provisions of the policy at its commencement;

"premium period", in relation to a policy other than a group scheme or a fund policy, means one of a succession of periods of time, each of 12 months' duration, the first of which commences on, and ends 12 months after, the date on which the policy is entered into or, if it is a later date, the date on which the obligation of the long-term insurer becomes operative;

"primary commission" means commission which is payable generally in respect of all policies in accordance with this Part other than secondary commission;

"services as intermediary" means any act performed by a person on behalf of an insurer or a policyholder –

(a) directed towards entering into, varying or renewing an insurance policy; or

(b) with a view to -

(i) maintaining, servicing or otherwise dealing with;

(ii) collecting or accounting for premiums payable under;

(iii) receiving, submitting or processing claims under; or

(iv) providing administrative services, other than policy data administration services as defined in sub-regulation 3.19 in Part 3C rendered on behalf of an insurer, in relation to,

an insurance policy, and includes any such act in relation to a fund, a member of a fund and the agreement between the member and the fund;

"replacement investment event" means a causal event resulting in the levying of a causal event charge in excess of 15% of the investment value or materially equivalent value of a

Comment [IRFD22]: Aligned with the same term as defined in the regulations under the STIA. See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*".
Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

Definition will be moved to after "secondary commission".

Comment [IRFD23]: Necessary to clarify that sub-regulation 3.9 applies to investment policies only. Facilitates the implementation of Proposal OO of RDR Phase 1.

policy, where 'causal event', 'causal event charge' and 'investment value' have the meanings assigned to them in Part 5A and 'materially equivalent value' means the value contemplated in sub-regulation 5.2(2)(b) of Part 5A;
[Definition of "replacement event" substituted by GN R952/2008]

"replacement investment policy" means a multiple premium policy which is an investment policy, where the policyholder is or was either the policyholder or the life insured in respect of any other investment policy, and where a replacement event occurs in respect of that other investment policy within a period of 4 months before or after the replacement investment policy is entered into;

"replacement risk policy" has the meaning assigned to it in the Policyholder Protection Rules;

"representative" means a person –

employed or mandated by a long-term insurer to render services as intermediary only in relation to policies –

(a) entered into or to be entered into by that insurer;

(b) entered into or to be entered into by another insurer which is also part of the same group of companies that the insurer is part of;

(c) entered into or to be entered into on or after 1 April 2017 by another insurer which has a written agreement with that insurer in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to a class of policies of that other insurer which none of the insurers referred to in paragraphs (i) and (ii) are registered to underwrite; or

(d) entered into prior to 1 April 2017 by another insurer which concluded a written agreement with that insurer prior to 1 January 2017 in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to that other insurer's policies;

"retirement annuity fund" means a retirement annuity fund as defined in the Income Tax Act, 1962;
[Definition of "retirement fund annuity" inserted by GN R952/2008]

"Scale A" means the scale of commission set out in Annexure 2 to this Part;

"scheme year", in relation to a group scheme or a fund policy, means a period -

(a) commencing on the later of -

(i) the date that the fund policy or group scheme is entered into with the long-term insurer concerned, or any anniversary of that date; or

(ii) the date of the appointment of an independent intermediary for the purposes of rendering services as intermediary in relation to the group scheme or fund policy;

(b) and ending on the earlier of -

(i) the day preceding the commencement of the next scheme year;

Comment [IRFD24]: Necessary to clarify that sub-regulation 3.9 applies to investment policies only.

Comment [IRFD25]: To give effect to Proposal OO of RDR Phase 1. The PPRs will also be amended to further give effect to this Proposal.

Comment [IRFD26]: Aligned with the same term as defined in the regulations under the STIA. See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*".
Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

Comment [IRFD27]: To give effect to Proposal V of RDR Phase 1:
Proposal V: Insurer tied advisers may no longer provide advice or services in relation to another insurer's products:
To provide that an insurer's representative will only be permitted to render services as intermediary (as currently defined in the regulations) in relation to:
(i) the insurer's own policies;
(ii) the policies of another long-term insurer which is a subsidiary or holding company of the first insurer; and
(iii) the policies of any other long-term insurer (external insurer) which has entered into a written agreement with the first insurer, in terms of which persons employed or engaged by the first insurer may render services as intermediary in relation to the external insurer's policies, provided that the licence conditions of neither of the insurers referred to in (i) or (ii) above, allow it to provide insurance policies in relation to the class of insurance policies concerned.
The proposed amendment will apply in relation to new policies entered into after the amendment comes into effect. It will recognise that insurer tied advisers who have rendered services on an external insurer's policies prior to this amendment, in accordance with the current paragraph (iii) of the definition of "representative", will be permitted to continue providing ongoing advice or services in relation to such policies, and will be able to continue to receive any currently permissible ongoing commissions or fees in relation to such policies, to which they may be contractually entitled."

Comment [IRFD28]: To strengthen the provisions relating to equivalence of reward. See sub-regulations 3.2 and 3.11 below.

(ii) the date of termination of the group scheme or fund policy with that long-term insurer; or

(iii) the date of termination of the appointment of the independent intermediary rendering services as intermediary in relation to that group scheme or fund policy;

"secondary commission" means commission which is payable, in addition to primary commission, in respect of certain policies only, as provided in and subject to this Part;

"single premium policy" means a policy under which the premium is payable in one amount only;

"Table" means the Table set out in Annexure 1 to this Part;

"term cover" means a policy under which a long-term insurer undertakes to provide policy benefits only upon -

(a) the life of a life insured having ended;

(b) the life of a life insured having begun;

(c) a health event occurring; or

(d) a disability event occurring,

during a specified period only;

"this Part" means this Part 3A;
[Definition of "this Part" inserted by GN R952/2008]

"tied", in relation to a compulsory annuity, means that there is an obligation to enter into the policy concerned with a particular insurer and no other.

3.2 General limitations

(1) No consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of the payment of commission in monetary form.

(2) No commission shall be paid or accepted otherwise than in accordance generally with this Part and more particularly as specified in the Table.

(3) Irrespective of how many persons render services as intermediary in relation to a policy, the total commission payable in respect of that policy shall not exceed the maximum commission payable in terms of regulation 3.4.

(4) No secondary commission shall be paid or accepted -

(a) in respect of a single premium policy;

(b) except in the case of a policy and benefit component of a kind specified -

in items 1.1, 2.1, 3.1.1, 3.2.1, and 5.1.1 and 5.2.1 of the Table;

Comment [IRFD29]: To facilitate changes to the Table.

(c) if the policy concerned has terminated before the commencement of its second premium period.

(4A) No remuneration or consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, a representative for rendering services as intermediary, otherwise than in accordance with the principle of "Equivalence of Reward" as determined by the Registrar under paragraph (5) below.

(5) The Registrar may by notice determine that particular forms of remuneration or consideration, whether in cash or in kind, comply or do not comply with the principle of "Equivalence of Reward".

3.3 Time of payment of commission

(1) Primary commission shall not be paid or accepted before -

(a) the first premium period has commenced; or

(b) the premium in respect of which it is payable has been received by the long-term insurer concerned, except that, in the discretion of that insurer -

(i) in the case of a policy and benefit component of a kind specified in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.2.1 of the Table, primary commission may be paid and accepted in one or more amounts after the policy has been entered into;

(ii) in the case of a group scheme or fund policy, primary commission in respect of a particular scheme year may be paid and accepted in one or more amounts after the policy has been entered into; and

(iii) in any other case, primary commission in respect of a particular premium period may be paid in one or more payments and accepted after the commencement of that premium period.

(2) Secondary commission may be paid and accepted in one or more amounts after the second premium period has commenced, at the discretion of the long-term insurer.

(3) If the full amount of primary or secondary commission is paid in more than one amount aggregating to that full amount, the long-term insurer concerned may pay interest at 15 per cent per annum, or such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually from the earliest date on which the full amount could have been paid, on any outstanding amount, until the full amount has been paid.

3.4 Maximum commission payable

(1) No primary commission shall exceed, in respect of each kind of policy and benefit component specified in column 2 of the Table, an amount arrived at by applying, in the case of -

(a) a single premium policy, other than a fund policy and a group scheme, the percentage specified in column 3 of the Table to the amount of the premium concerned;

(b) a multiple premium policy, other than a fund policy and a group scheme, the percentage specified in column 4 of the Table to the total amount of the premium payable during the premium-paying term, calculated as if the premium payable during the first premium period were payable at that level throughout the

Comment [IRFD30]: To partially give effect to Proposal RR of RDR Phase 1: Full implementation of Proposal RR will need to address a broad range of current insurance tied adviser remuneration models, which will require further technical work. We remain concerned that a number of current practices in relation to representative remuneration give rise to inappropriate distortions in the advice market. Accordingly, as an interim measure pending full implementation of Proposal RR, certain practices needs to be clarified.
Proposal RR: Equivalence of reward to be reviewed:
Specific standards will be set to clarify and strengthen the principle of "equivalence of reward" as the basis on which long-term insurers may remunerate their tied advisers. These standards will include provisions:
- Confirming that the principle of equivalence applies at the level of each individual tied adviser.
- Detailing the nature of remuneration and benefits to be taken into account in applying the principle – including commissions, fees, salary-based payments, allowances, medical and pension benefits, non-cash incentives, participation in conferences and events, share options, etc. So-called "sign-on bonuses" and all forms of production or other performance incentives or rewards, whether or not they are conditional or deferred, will also be included.
- Providing for how to apply the principle of equivalence at appropriate time periods or across appropriate tranches of business, bearing in mind that the equivalent value of commission that would have been payable to a non-tied adviser can only be calculated with hindsight.
- To clarify that the equivalence model relates to remuneration relating to life insurance risk benefits only (being the products in respect of which product supplier commission and fees remain payable), with remuneration relating to investment products being determined with reference only to the quantum of customer agreed advice fees paid. Any portion of a tied adviser's "total cost to company" remuneration that is attributable to advice on or sale of investment products, may not in aggregate exceed the value of customer advice fees in fact paid by customers in respect of such products over an appropriate period.

The regulator will specifically monitor insurers' application of the equivalence of reward standards.

Comment [IRFD31]: To facilitate changes to the Table.

premium-paying term of the policy, which commission may be paid and accepted in one or more amounts at the discretion of the long-term insurer: Provided that such commission shall not exceed, in the case of a policy and benefit component specified in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.2.1 of the Table, an amount equal to the percentage specified in column 5 of the Table of the premium payable during the first premium period of the policy; or

Comment [IRFD32]: To facilitate changes to the Table.

(c) a fund policy or a group scheme, an amount which shall not exceed 12/m of the aggregate commission on the annualised premium as provided for in Scale A.

(2) No secondary commission shall exceed one-third of the amount of the primary commission paid in respect of the policy and benefit component concerned: Provided that if such commission is paid and accepted in more than one amount, the value thereof discounted at 15 per cent per annum, or such other rate of interest as may be prescribed by the Registrar from time to time, compounded annually to the beginning of the second premium period of the policy, shall not exceed one third of the value of the primary commission excluding interest.

3.5 Adjustment and refund of commission

(1) If the provisions of a multiple premium policy are varied so that the total amount of the premium which was payable during the premium-paying term of the policy and which was used for the purpose of the calculation of commission in terms of regulation 3.4, is, for any reason -

Comment [IRFD33]: Correction.

(a) increased, the primary and secondary commission payable in relation to that increase shall be dealt with in terms of this Part as if -

(i) the total amount of the increase payable during the remainder of the premium-paying term were the only premium payable under the policy; and

(ii) the premium period in which that variation becomes operative were the first premium period of the policy; or

(b) reduced, with effect from a date before the end of the second premium period of the policy -

(i) the primary commission previously calculated in terms of regulation 3.4(1)(b) to be payable shall be recalculated in accordance with this Part in relation to the total amount of premium as so reduced and any amount of commission which has been paid, or would have been payable had the reduction not occurred, and which exceeds the amount payable in accordance with the recalculation, shall be determined by the insurer concerned; such part of that amount as exceeds the percentage in column A of the Table in subregulation (2) shall be reversed and, if already paid, shall be refunded to the insurer by the person to whom it was paid;

(ii) the secondary commission previously calculated in terms of regulation 3.4(2) to be payable, shall be recalculated in accordance with this Part in relation to the total amount of primary commission as reduced in accordance with subparagraph (i) and any amount of commission which has been paid, or would have been payable had the reduction not occurred, and which exceeds the amount payable in accordance with the recalculation shall be determined by the insurer concerned; such part of that amount as exceeds the percentage in column B of the Table in

subregulation (2) shall be reversed and, if already paid, shall be refunded to the insurer by the person to whom it was paid.

(2)(a) If a premium or any part thereof is -

(i) for any reason refunded by the long-term insurer or, in the case of a multiple premium policy which is not -

(aa) a fund policy, or

(bb) a fund member policy other than a fund member policy which funds a retirement annuity fund, or

(cc) a policy in respect of which commission has been paid only after each premium in respect of which it is payable has been received by the long-term insurer concerned (including but not limited to a replacement investment policy),

Comment [IRFD34]: Necessary to clarify that the paragraph applies to investment policies only.

for any reason not paid on its due date, including that the policy has been made paid-up or surrendered, but excluding termination upon a health event, a disability event or the death of a life insured, during the first two premium periods in the case of a policy referred to in items 1.1, 2.1, 3.1.1, 3.2.1, 5.1.1 and 5.1.2 of the Table the commission payable in terms of this Part shall be recalculated by reference to the scale and shall not exceed the percentage of maximum commission in column A or B, respectively, and any amount of commission which has already been paid in excess of the commission as so recalculated, shall be reversed by the long-term insurer and refunded to it by the person to whom it was paid:

Comment [IRFD35]: To facilitate changes to the Table.

Premiums received with an equivalent value to monthly premiums for -	Column A Maximum percentage of primary commission payable	Column B Maximum percentage of secondary commission payable
0-6 months	Nil	not applicable
7 months	29,17	not applicable
8 months	33,33	not applicable
9 months	37,5	not applicable
10 months	41,67	not applicable
11 months	45,83	not applicable
12 months	50	not applicable
13 months	54,17	8,3
14 months	58,33	16,7
15 months	62,5	25
16 months	66,67	33,3
17 months	70,83	41,7
18 months	75	50
19 months	79,17	58,3
20 months	83,33	66,7
21 months	87,5	75
22 months	91,67	83,3
23 months	95,83	91,7
24 months	100	100

(ii) in the case of any policy not mentioned in subparagraph (i), for any reason refunded by the long-term insurer, or for any reason not paid on its due date, any commission paid by the long-term insurer shall be reversed and refunded to it by the person to whom it was paid;

(b) Subparagraphs (i) and (ii) of paragraph (a) shall -

(i) not apply to the extent that, and for so long as, payment of an unpaid premium is effected by means of the maintenance of the policy in force as contemplated in section 52(2) or (3);

(ii) be deemed not to have been applicable if and to the extent that, any premium or part thereof which was unpaid is later paid to the long-term insurer, and in that event any reversed commission refunded to the long-term insurer may again be paid to the person by whom it was refunded.

3.6 Special provisions concerning fund and fund member policies

(1) No commission shall be paid or accepted in relation to so much of the premium payable under a fund policy as has already borne commission under a prior, substituted fund policy.

(2) The commission payable in respect of a fund policy or a fund member policy, as provided for in this Part shall be reduced by the value of any consideration provided by the fund concerned, or its members, for services rendered as intermediary in connection with the agreement whereby the fund assumed the obligation concerned to the member.

3.7 Commission when policy has different benefit components

If, in respect of a policy which comprises more than one benefit component, it is not specified in or ascertainable from the written provisions of the policy what portion of the total premium payable is attributable to the different benefit components, the commission payable in terms of this Part shall not exceed that which would have been so payable had the policy comprised, and had the total premium been attributable to, only that benefit component which most closely reflects the main purpose of the policy to the exclusion of other subordinate purposes of the policy.

3.8 Voidness of certain agreements

Any agreement, scheme or arrangement to provide consideration for the rendering of services as intermediary otherwise than in accordance with this Part shall be void.

3.9 Special provisions concerning replacement investment policies

(1) Commission may only be paid in respect of a replacement investment policy as a level percentage of the premiums received, and may only be paid once the premium in respect of which it is payable has been received by the long-term insurer concerned, whether or not -

(a) the replacement investment policy comprises more than one benefit component; or

(b) the portion of the total premium attributable to the different benefit components of the replacement investment policy is specified in or ascertainable from the written provisions of the policy.

(2)(a) The total amount of commission paid on a replacement investment policy may not exceed the total of the primary and secondary commission that would have been payable in terms of this Part in respect of a policy other than a replacement investment policy; and

(b) in determining such total amount, the long-term insurer concerned may include interest at 15 per cent per annum, or such other rate of interest as may be

prescribed by the Registrar from time to time, compounded annually from the earliest date on which the full amount of primary or secondary commission could have been paid if the policy was not a replacement investment policy, until such full amount has been paid.

(3) In the event of commission on a replacement investment policy being paid or accepted otherwise than in accordance with subregulation (1) or (2), whether due to the fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement investment policy, or for any other reason, then any commission paid by the long-term insurer in excess of the commission payable in accordance with subregulation (2), or paid earlier than permitted in subregulation (1), shall upon identification of the excess or early payment, be reversed and refunded to the long-term insurer by the person to whom it was paid.

Comment [IRFD36]: Necessary to clarify that this subregulation applies to investment policies only.

3.9A Special provisions concerning replacement risk policies

(1) Notwithstanding regulation 3.4, a long-term insurer must either –

(a) not pay any commission to any person in respect of a replacement risk policy unless and until a managing executive of that long-term insurer has provided the confirmation referred to in rule [-] of the Policyholder Protection Rules; or

Comment [IRFD37]: Reference will be inserted once the proposed amendments to the PPRs to give effect to, amongst others, Proposal OO of RDR Phase 1, have been finalised.

(b) where the long-term insurer does pay commission to a person in respect of a replacement risk policy, reverse such payment and ensure that the payment is refunded to the long-term insurer if a managing executive of that long-term insurer is not able to provide the confirmation referred to in rule [-] of the Policyholder Protection Rules, or fails to provide the confirmation within the time specified in that Rule.

Comment [IRFD38]: Reference will be inserted once the proposed amendments to the PPRs to give effect to, amongst others, Proposal OO of RDR Phase 1, have been finalised.

(2) In the event of commission on a replacement risk policy being paid or accepted otherwise than in accordance with subregulation (1), whether due to the fact that the long-term insurer was not aware at the time of payment that the policy in question was a replacement risk policy, or for any other reason, then any commission paid by the long-term insurer shall upon identification be reversed and refunded to the long-term insurer by the person to whom it was paid.

Comment [IRFD39]: To give effect to Proposal OO of RDR Phase 1. The PPRs will also be amended to further give effect to this Proposal.
Proposal OO: Product supplier commission prohibited on replacement life risk policies:
(iv) A requirement that an appropriate person (role to be identified) within the new insurer must, within a stipulated period, review the replacement policy advice record and record in writing that they are satisfied that it complies with the applicable disclosure standards. The new insurer may issue the policy concerned in accordance with its normal new business processes, but will not be permitted to pay any commission, fee or other remuneration to the adviser concerned unless and until this confirmation has taken place. Note that this requirement applies regardless of whether or not the adviser is a representative of the insurer.
(vii) If it is established that the adviser concerned has failed to submit a replacement policy advice record to the new insurer where this is required, an obligation on the new insurer to reverse any commission or remuneration that may have been paid in respect of the new policy. The contravention must be reported to the regulator, and will be subject to regulatory action. The policyholder must be notified that they have a new 30 day cooling off period within which to review the suitability of the policy.

Annexure 1

Table
[Annexure 1 substituted by GN R952/2008]

Item	*Kind of policy or benefit component*	*Maximum percentage*			*Notes*	
		Single premium policy	*Multiple premium policy*		*Up-front payment reg 3.3(1)(b)(i) applicable*	*Secondary commission: reg 3.2(4)(b) applicable*
			Basic percentage	*Limit per proviso to reg 3.4(1)(b)*		
	Column 2	*Column 3*	*Column 4*	*Column 5*	*Column 6*	*Column 7*
		%	%	%		
1	**Individual policy, not elsewhere specified**					
1.1	not immediate annuity	3.0	3.25	85.0	yes*	yes*
1.2	immediate annuity					
1.2.1	not compulsory	1.5	not applicable	not applicable	no	no
1.2.2	compulsory, not tied	1.5	not applicable	not applicable	no	no
1.2.3	compulsory, tied	nil	not applicable	not applicable	no	no

2	**Fund member policy**					
2.1	funding a retirement annuity fund					
2.1.1	upon entry, not a transfer	2.5	3.0	75.0	yes*	yes*
2.1.2	upon entry, a transfer from a fund other than a retirement annuity fund to					
2.1.2.1	a fund chosen by the member	1.5	not applicable	not applicable	no	no
2.1.2.2	a fund not chosen by the member	nil	not applicable	not applicable	no	no
2.1.3	upon entry, a transfer from another retirement annuity fund	nil	not applicable	not applicable	no	no
2.2	not funding a retirement annuity fund					
2.2.1	upon entry, not a transfer	2.5	3.0	75.0	yes*	yes*
2.2.2	upon entry, a transfer from another fund	1.5	not applicable	not applicable	no	no
3	**Life policy**					
3.1	Other than term cover only					
3.1.1	individual	3.0	3.25	85.0	yes*	yes*
3.1.2	incorporated in a group scheme					
3.1.2.1	which is a credit scheme	7.5	7.5	85.0	yes*	yes*
3.1.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
3.2	Term cover only					
3.2.1	individual	7.5	3.25	nil	no	no
3.2.2	incorporated in a group scheme					
3.2.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
3.2.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
4	**Fund policy**	**Scale A**	**Scale A**	**not applicable**	**no**	**no**
5	**Health policy and disability policy**					
5.1	Other than term cover only					
5.1.1	individual	3.0	3.25	85.0	yes	yes
5.1.2	incorporated in a group scheme					
5.1.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
5.1.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
5.2	Term cover only					
5.2.1	individual	7.5	3.25	nil	no	no
5 2 2	incorporated in a group scheme					
5.2.2.1	which is a credit scheme	7.5	7.5	not applicable	no	no
5.2.2.2	which is not a credit scheme	Scale A	Scale A	not applicable	no	no
6	**Sinking fund policy**	3.0	3.0	nil	no	no
7	**Assistance policy**	–	–	–	no	no

Notes to Annexure 1:

- An asterisk (*) denotes "*excluding a replacement investment policy*".
- A dash (–) denotes that there is no limit.
- "nil" denotes that no commission may be paid.
- A policy, other than one that provides an immediate annuity, that is a fund member policy or a fund policy falls under item 2 or 4, as the case may be irrespective whether it can fall also under another item. A policy that provides an immediate annuity that is a fund member policy or a fund policy attracts the commission referred to in item 1.2.
- Item 2.1.2.1 applies with effect from 1 March 2007.

Comment [IRFD40]: To recognise that group schemes may provide whole of life cover.

Comment [IRFD41]: To recognise that group schemes may provide whole of life cover.

Comment [IRFD42]: Necessary to clarify that this subregulation applies to investment policies only. Facilitates the implementation of Proposal OO of RDR Phase 1.

Annexure 2

SCALE A

1. Normal commission

MAXIMUM COMMISSION AS PERCENTAGE OF ANNUALISED PREMIUM UNDER A GROUP SCHEME OR FUND POLICY	ANNUALISED PREMIUM OF WHICH THE AMOUNT -

%	EXCEEDS	DOES NOT EXCEED
	R	R
7,5%		200 000
5,0%	200 000	300 000
3,0%	300 000	600 000
2,0%	600 000	2 000 000
1,0%	2 000 000	UNLIMITED

Comment [IRFD43]: Adjusted to better align with CPI.

2. Special commission

In addition to the normal commission contemplated in paragraph 1, there may be paid, once only and only in respect of the period of 12 months following the date on which the group scheme or fund policy is established, a special commission equal to the lesser of -

(a) 7,5 per cent of the total premium payable during that period of 12 months; or

(b) R 7 500.

Comment [IRFD44]: Adjusted to better align with CPI.

[Part 3 amended by GN R197/2000, GN R164/2002 and GN R1209/2003 and substituted by GN R186/2007]

PART 3B
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY - INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009

3.10 Application of this Part 3B, and definitions

(1) This Part 3B applies to –

(a) investment policies that started on or after 1 January 2009, but except only for purposes of regulation 3.15(4), does not apply to risk components of such investment policies; and

(b) any variable premium increase (as defined in Part 5A) in respect of a policy to which Part 5A applies.

Comment [IRFD45]: See Regulation 5.10.
To give effect to Proposal PP of RDR Phase 1.
"Proposal PP: Commission regulation anomalies on "legacy" insurance policies to be addressed:
The commission regulations under the Long-term Insurance Act will be amended to consistently apply the same commission basis to variable premium increases on "legacy" investment products as is currently applied to new investment policies.
This will be used in combination with other measures to help ensure that early termination values on legacy contractual savings products are reduced to reasonable levels within the next few years and that such products deliver fair outcomes for both new and existing customers."

(2) In this Part 3B, unless defined differently in this Part 3B or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 3A or 5B has the meaning assigned to it in that Part, and -

'discount term', in relation to a multiple premium policy, means the period that begins on the premium commencement date and:

(a) in the case of a fund member policy, is a period of 25 years or, if it is shorter, the period for which the premium is to be paid specified in the policy, or determinable from its written provisions, as at the start of the policy; or

(b) in the case of a policy other than a fund member policy, is a period of 15 years or, if it is shorter, the period for which the premium is to be paid specified in the policy, or determinable from its written provisions, as at the start of the policy;

'fund member policy' has the meaning assigned to it in Part 5A;

'insurer' means a long-term insurer;

'investment policy' has the meaning assigned to it in Part 5B;

'member' has the meaning assigned to it in Part 5A;

'payment date', in relation to a premium, means the date on which that premium must be paid in terms of the policy;

'preservation fund' means a pension preservation fund or a provident preservation fund, which terms have the meanings assigned to it in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

'risk component' means a component that on its own constitutes an excluded policy;

'Table' means the table accompanying this Part; and

'this Part' means this Part 3B.

3.11 General prescriptions

(1) Remuneration for rendering services as intermediary may be paid by or on behalf of an insurer, and received by an independent intermediary -

(a) only in accordance with this Part;

(b) only after the policy has started; and

(c) only as commission in monetary form.

(2)(a) No remuneration or consideration shall, directly or indirectly, be provided to, or accepted by or on behalf of, a representative for rendering services as intermediary, otherwise than in accordance with the principle of "Equivalence of Reward" as determined by the Registrar under paragraph (b) below.

(b) The Registrar may by notice determine that particular forms of remuneration or consideration, whether in cash or in kind, comply or do not comply with the principle of "Equivalence of Reward"..

(3) The total commission per policy may not exceed the maximum prescribed by this Part, irrespective whether more than one independent intermediary or representative renders services in respect of that policy.

(4) If a policy has two or more components, each component must for the purposes of this Part, and where applicable, for the purposes of Part 3A, be dealt with as if it were a separate policy.

(5) If a policy (that does not have two or more components) or a component provides more than one type of policy benefit, and one or more of these benefits is a benefit other than a risk benefit, the maximum commission in respect of that policy or component must be determined in accordance with this Part.

(6) Any agreement, scheme or arrangement to offer, provide, accept, pay, or receive remuneration, otherwise than in accordance with this Part, is void.

3.12 Maximum commission

Comment [IRFD46]: To partially give effect to Proposal RR of RDR Phase 1: Full implementation of Proposal RR will need to address a broad range of current insurance tied adviser remuneration models, which will require further technical work. We remain concerned that a number of current practices in relation to representative remuneration give rise to inappropriate distortions in the advice market. Accordingly, as an interim measure pending full implementation of Proposal RR, certain practices needs to be clarified.
Proposal RR: Equivalence of reward to be reviewed:
Specific standards will be set to clarify and strengthen the principle of "equivalence of reward" as the basis on which long-term insurers may remunerate their tied advisers. These standards will include provisions:
- Confirming that the principle of equivalence applies at the level of each individual tied adviser.
- Detailing the nature of remuneration and benefits to be taken into account in applying the principle – including commissions, fees, salary-based payments, allowances, medical and pension benefits, non-cash incentives, participation in conferences and events, share options, etc. So-called "sign-on bonuses" and all forms of production or other performance incentives or rewards, whether or not they are conditional or deferred, will also be included.
- Providing for how to apply the principle of equivalence at appropriate time periods or across appropriate tranches of business, bearing in mind that the equivalent value of commission that would have been payable to a non-tied adviser can only be calculated with hindsight.
- To clarify that the equivalence model relates to remuneration relating to life insurance risk benefits only (being the products in respect of which product supplier commission and fees remain payable), with remuneration relating to investment products being determined with reference only to the quantum of customer agreed advice fees paid. Any portion of a tied adviser's "total cost to company" remuneration that is attributable to advice on or sale of investment products, may not in aggregate exceed the value of customer advice fees in fact paid by customers in respect of such products over an appropriate period.

The regulator will specifically monitor insurers' application of the equivalence of reward standards.

(1) The maximum commission that may be paid in respect of a multiple premium policy is an amount equal to 5% of each premium.

(2)(a) Subject to paragraph (b), the maximum commission that may be paid in respect of a single premium policy is an amount equal to 3% of the premium.

(b) The maximum commission that may be paid in respect of a single premium policy -

(i) of which the policy benefit is an immediate annuity, is an amount equal to 1.5% of the premium;

(ii) that is a fund member policy which funds a retirement annuity fund, upon a transfer from a fund other than a retirement annuity fund, is an amount equal to 1.5% of the premium;

(iii) that is a fund member policy which funds a retirement annuity fund, upon a transfer from a retirement annuity fund, is nil;

(iv) that is a fund member policy which funds a preservation fund, upon a transfer from a fund other than a preservation fund, is an amount equal to 1.5% of the premium;

(v) that is a fund member policy which funds a preservation fund, upon a transfer from a preservation fund, is nil;

(vi) that is a fund member policy, which does not fund a retirement annuity fund or a preservation fund, upon a transfer from another fund, is an amount equal to 1.5% of the premium.

3.13 Time of payment of commission

(1) Commission in respect of a premium may be paid only on or after the payment date of that premium.

(2) Despite subregulation (1), an insurer, at its discretion, may discount commission in respect of a multiple premium policy in terms of regulation 3.15, and pay the discounted commission at any time after the policy has started.

(3)(a) An insurer, at its discretion, may pay commission in two or more instalments, provided that the sum of the instalments, before any increase in terms of paragraph (b), does not exceed the maximum commission referred to in regulation 3.12.

(b) Where commission is paid in two or more instalments, the insurer, at its discretion, may increase any instalment at an annual effective rate of not more than 6% from the date the commission becomes payable to the date on which that instalment is paid.

3.14 Premium increases and additional premiums

If the premium is increased in accordance with the terms of the policy as at the start of the policy or as amended from time to time, or if an additional premium is paid, the discounted and undiscounted commission in respect of the increased portion of the premium or in respect of the additional premium must, except for the purpose of subregulation 3.15(4), be dealt with as if -

(a) the increased portion of the premium, or the additional premium, were a premium payable or paid under a separate policy; and

(b) that separate policy starts on the first or only payment date of the increased portion of the premium or the additional premium.

3.15 Discounting of commission

(1) In the case of a multiple premium policy the insurer, at its discretion, may discount a portion of the commission in respect of every premium of which the payment date falls within the discount term: Provided that an insurer, at its discretion, may discount a portion of the commission in respect of every premium of which the payment date falls within a shorter period than the discount term, in which case that shorter period will be regarded as the discount term for purposes of that policy.

(2) The maximum portion of the commission that may be discounted in respect of each premium is an amount equal to 2,5% of that premium, and the portion of commission that is discounted must be the same proportion of every premium.

(3) The discounting must be done -

(a) once only and only at the start of the policy, and this may be done also at the payment of an additional premium and at the start of payment of an increased premium, as contemplated in regulation 3.14;

(b) from the payment date of each premium to the premium commencement date, at an annual effective rate of not less than 6%.

(4) Despite subregulation (2), but subject to regulation 3.12(1), if the commission discounted for the policy, or where the policy at its start has two or more components the aggregate commission discounted for all the components (including risk components), comes to less than four hundred Rand, the insurer, at its discretion, may discount a larger portion of the commission in respect of all the premiums, at a level higher than 2,5% of each premium, to allow for a discounted commission for the policy, or an aggregate discounted commission for all the components of the policy (including risk components), of not more than four hundred Rand.

(5) The discounting in terms of subregulation (4) may be done once only and only at the start of the policy, but not at the payment of an additional premium or at the start of an increased premium, as contemplated in regulation 3.14.

3.16 Redirecting of commission

(1) A policyholder (excluding a person to whom the policy has been ceded as security) or member may at any time during the life of an investment policy instruct the insurer in writing to stop paying further discounted and undiscounted commission to an independent intermediary or a representative, provided that as part of that instruction the policyholder or member also must instruct the insurer -

(a) to pay the further commission to another independent intermediary, nominated by the policyholder or member in that instruction, who has a contract with the insurer for rendering services as intermediary in respect of policies of the insurer of the type of policy in question; or

(b) to pay the applicable portion of the further commission, in accordance with the principle of equivalence of reward referred to in regulation 3.11(2), to another

representative of the insurer nominated by the policyholder or member in that instruction, who is approved by the insurer to render services as intermediary in respect of the policy in question; or

(c) to pay the applicable portion of the further commission, in accordance with the principle of equivalence of reward referred to in regulation 3.11(2), to another representative of the insurer to be appointed by the insurer to render services as intermediary to the policyholder or member in respect of the policy in question.

(2) The insurer must, at no additional cost to the policyholder, comply with an instruction contemplated in subregulation (1).

3.17 Adjustment and refund of commission

(1) If, within 5 years after the premium commencement date, the premium is stopped or decreased - for any reason other than where the policy ends on account of a disability event, a health event, or the death of a life insured - the insurer must reverse a proportion of any discounted commission payable or paid on premiums received.

(2) The proportion of commission to be reversed based on premiums received as contemplated in terms of subregulation (1), must be calculated by applying the applicable adjustment percentage in column 2 of the Table to the ratio that the premium decrease bears to the premium in respect of which the discounted commission first was calculated.

(3) If a premium or a part of it, of which the payment date falls within 5 years after the premium commencement date, is not paid to the insurer or is paid back by the insurer - for any reason other than where the premium is stopped or decreased, or where the policy ends on account of a disability event, a health event, or the death of a life insured - the insurer must reverse any discounted commission payable or paid in respect of that premium or part of it.

(4) If a premium or a part of it, whether its payment date falls within or after 5 years after the premium commencement date, is not paid to the insurer or is paid back by the insurer, the insurer must reverse any undiscounted commission paid in respect of that premium or part of it.

(5)(a) If discounted or undiscounted commission paid to an independent intermediary or a representative is reversed in terms of subregulation (1), (3) or (4), the independent intermediary or representative must pay it back to the insurer.

(b) If commission has been paid back to the insurer in terms of paragraph (a), and the premium in question or part of it is paid to the insurer thereafter, the insurer may again pay that commission to the independent intermediary or representative.

(6) Subregulations (1) to (5) do not apply to the extent that, and for as long as, the policy is maintained in terms of section 52(2), but not made paid-up.

3.18 Replacement investment policies

Comment [IRFD47]: Necessary to clarify that this subregulation applies to investment policies only.

(1) Commission may not be discounted in respect of a replacement investment policy.

(2) In the event of commission in respect of a replacement investment policy having been paid otherwise than in accordance with this Part, whether because the insurer at the time of the payment was not aware that the policy in question was a replacement

investment policy, or for any other reason, then any commission paid by the insurer in excess of the maximum that may be paid in accordance with this Part, or paid earlier than permitted in this Part, must, upon identification of the payment, be reversed and paid back to the insurer by the person to whom it was paid.

[Part 3B inserted by GN R952/2008]

Table
Regulation 3.17(2)

Column 1 *Premiums received with a value equivalent to monthly premiums for*	*Column 2* *Adjustment Percentage*		*Column 1* *Premiums received with a value equivalent to monthly premiums for*	*Column 2* *Adjustment Percentage*
0 months	100		31 months	48,33
1 months	100		32 months	46,67
2 months	100		33 months	45
3 months	100		34 months	43,33
4 months	100		35 months	41,67
5 months	100		36 months	40
6 months	100		37 months	38,33
7 months	88,33		38 months	36,67
8 months	86,67		39 months	35
9 months	85		40 months	33,33
10 months	83,33		41 months	31,67
11 months	81,67		42 months	30
12 months	80		43 months	28,33
13 months	78,33		44 months	26,67
14 months	76,67		45 months	25
15 months	75		46 months	23,33
16 months	73,33		47 months	21,67
17 months	71,67		48 months	20
18 months	70		49 months	18,33
19 months	68,33		50 months	16,67
20 months	66,67		51 months	15
21 months	65		52 months	13,33
22 months	63,33		53 months	11,67
23 months	61,67		54 months	10
24 months	60		55 months	8,33
25 months	58,33		56 months	6,67
26 months	56,67		57 months	5
27 months	55		58 months	3,33
28 months	53,33		59 months	1,67
29 months	51,67		60 months	0
30 months	50			

[Part 3B inserted by r 1.4 in GNR.952 of 5 September 2008.]

PART 3C
LIMITATION ON REMUNERATION FOR OUTSOURCING

3.19 Application of this Part 3C, and definitions

(1) This Part 3C applies to any outsourcing by an insurer of a binder function or policy data administration services.

(2) In this Part 3C, unless defined differently in this Part 3C or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 6 has the meaning assigned to it in that Part, and -

''cell structure'' means an arrangement under which a person (cell owner) -

(a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;

(b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and

(c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up;

Comment [IRFD48]: To facilitate amendment to regulation 3.22.

"outsourcing" means any arrangement of any form between an insurer and another person, whether that person is regulated or supervised under any law or not, in terms of which that party performs a function that is integral to the nature of the insurance business that an insurer provides, which would otherwise be performed by the insurer itself in conducting long-term insurance business, and includes rendering services under a binder agreement and rendering policy data administration services, but excludes rendering services as intermediary;

Comment [IRFD49]: Definition aligned to the definition of the Financial Sector Regulation Bill.
Facilitates the implementation of Part 3D below.

"policy data administration services" means the managing, recording and updating of policy and policyholder data of an insurer on behalf of that insurer in a manner that –

(a) ensures complete integration between the information technology system of the insurer and the person that provides the services; and

(b) enables the insurer to have continuous access to accurate, up-to-date, complete and secure policy and policyholder data.

Comment [IRFD50]: Facilitates the implementation of Proposals Z & AA of RDR Phase 1.

Remuneration relating to outsourcing of policy data management services

3.20 Limitation on remuneration for policy data administration services

(1) An insurer or any other person must only offer or pay a fee for policy data administration services to any person, and that person must only accept such a fee, if that person has the operational capability to provide such policy data administration services.

(2) The fee referred to in paragraph (a) must not exceed 2% of the total premium payable by policyholders in respect of the policies to which the policy data administration services relate.

(3) Despite subregulation (1) above, an insurer or any other person must not offer or pay a fee for policy data administration services to -

(a) a representative that is a natural person, and that representative must not accept such a fee; or

(b) a binder holder, and that binder holder must not accept such a fee, if that binder holder has a binder agreement with the insurer to perform the service or function contemplated in section 49A(1)(a) of the Act.

Comment [IRFD51]: To allow for remuneration in respect of policy data administration services in a manner that manages conflict of interests and recognises that where a binder agreement is in place, such policy data administration services is deemed to be incidental to the binder function.

Limitation on remuneration to binder holder

3.21 Remuneration that may be offered or provided to a binder holder

Comment [IRFD52]: Text not in tracked changes are part of the existing regulation 6.4 that has been moved here.

(1) An insurer may pay a binder holder a fee for the services rendered under the binder agreement, which fee must be reasonably commensurate with the actual costs incurred by the binder holder associated with rendering the services under the binder agreement, with allowance for a reasonable rate of return for the binder holder.

(2) Despite subregulation (1), an insurer must not without the prior approval of the Registrar referred to in subregulation (3) pay a binder holder a fee for the services rendered under the binder agreement that exceeds the value listed in the Table below, reflected as a percentage of the aggregate of the total premiums payable by policyholders in respect of the policies to which the binder function relates, if that binder holder is –

(a) a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies;

(b) a non-mandated intermediary that is an associate of another non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies.

Table

BINDER FUNCTION	MAXIMUM FEE PAYABLE
Enter into, vary or renew a policy – section 49A(1)(a)	2%
Determine the wording of a policy - section 49A(1)(b), determine premiums under a policy - section 49A(1)(c) or determine the value of policy benefits under a policy - section 49A(1)(d), or any combination of the above	2%
Settle claims under a policy – section 49A(1)(e)	2%

(3) The Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer grant approval to the insurer to pay a binder holder a fee in excess of the fees referred to in regulation 3.21(2) if the Registrar is satisfied that:

(a) such a fee is appropriate taking into account the nature, scale and complexity of the insurance business to which the relevant binder function relates; and

(b) such a fee will not impede the fair treatment of policyholders;

(c) no conflict of interest or potential conflict of interest exists; or

(d) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders.

(4) Any fee referred to under subregulation (1) payable to a non-mandated intermediary that may perform the service or function contemplated in section 49A(1)(e) of the Act under a binder agreement, may not constitute or be based on a percentage of the difference between an amount claimed or the maximum value of policy benefits payable under a policy and the policy benefits actually provided to a policyholder in settlement of a claim.

(5) Any fee referred to under regulation 3.20 or this regulation 3.21, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which disclosure must be included in the disclosures contemplated under regulation 6.2(1)(g).

Comment [IRFD53]: To give effect to Proposal ZZ of RDR Phase 1. Once consultation and technical work on the appropriate binder fee caps are finalised, which is targeted for quarter 4 of 2016, the maximum %s will be adjusted, if necessary.

"Proposal ZZ: Binder fees payable to multi-tied intermediaries to be capped
Maximum binder fees payable to multi-tied non-mandated intermediaries, per binder activity, will be prescribed. Although further consultation is ongoing on the appropriate caps and the activities to which they will be applied will take place, the table included in the subregulation sets out an initial indicative fee capping model. The proposal does not apply to binder fees paid to underwriting managers in terms of the Binder regulations. Underwriting managers act solely as agents of the insurer; may not sell directly to the customer; and may not do business with a related intermediary. Accordingly, the concerns that arise regarding potential conflicts of interest when an intermediary provides binder services do not arise in the case of an underwriting manager.
For underwriting managers, no regulatory caps on binder fees will apply, but the fees should comply with the general principle that they must be reasonable and commensurate with the cost of performing the function. Underwriting managers may also continue to participate in the underwriting profits of the insurer."

3.22 Participation by a binder holder in profits attributable to the policies referred to in a binder agreement

(1) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(2) Subregulation (1) does not prohibit a non-mandated intermediary that is a binder holder and entered into a cell structure with an insurer from receiving dividends in respect of shares held in that insurer as part of that cell structure.

(3) An administrative FSP or underwriting manager, in respect of the services rendered under the binder agreement, may share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

Comment [IRFD54]: The proposed Binder Regulations proposed this amendment to clarify that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer.

PART 3D
GENERAL PRINCIPLES FOR DETERMINING REMUNERATION

Comment [IRFD55]: Principles that insurers must apply when determining any remuneration have been introduced.

3.23 Application of this Part 3D, and definitions

(1) In this Part 3D, any word or expression to which a meaning has been assigned in any other Part has the meaning assigned to it in that Part.

(2) This Part 3D, applies to any remuneration offered or provided, directly or indirectly, by or on behalf of a long-term insurer, a policyholder or any other person, or accepted by any other person, for –

(a) rendering services as intermediary;

(b) providing policy data administration services;

(c) performing a binder function or incidental activity under a binder agreement; or

(d) rendering any other services under any other outsourcing arrangement.

3.24 General principles for determining remuneration

(1) Remuneration paid to any person for the rendering of any service, activity or function performed by that person, must –

(a) be reasonably commensurate with the actual service, function or activity performed;

(b) not result in any service, function or activity referred to in regulation 3.23(2) being remunerated again;

(c) not be structured in a manner that may increase the risk of unfair outcomes for policyholders; and

(d) not be linked to the monetary value of claims for policy benefits repudiated, paid, not paid or partially paid.

(2) Subregulation (1) applies in addition to any specific requirements relating to remuneration for specific services, activities or functions set out in these regulations.

PART 4
LIMITATION ON PROVISIONS OF CERTAIN POLICIES
(Section 54)

Comment [IRFD56]: Although Item 2 of Schedule 3 of the Insurance Bill as tabled in Parliament indicates that the current Part 4 (Limitation on provisions of certain policies) of the LTIA Regulations will be repealed, this Part has been retained to facilitate consultation with industry and other stakeholders on the repeal of this Part.

4.1 Definitions

In this Part -

"excess premium" means a premium which is received by, or which becomes due to, a long-term insurer during a premium period, and which -

(a) by itself exceeds;

(b) when aggregated with all premiums already received, and still to be received, during that premium period, exceeds; or

(c) is the first of increased recurrent premiums which, if it had been received by the long-term insurer at that increased rate during that premium period, would have caused the total value of the premiums received by the long-term insurer during that premium period to exceed,

by a rate of more than 20 per cent, the higher of the total value of the premiums received by the long-term insurer during any one of the two premium periods immediately preceding that premium period: Provided that if a premium is increased during the second premium period, the percentage increase shall be determined in relation to the first premium period only;

Comment [IRFD57]: To ensure that this part applies to (a) – (c) above.

"extended restriction period" means a restriction period -

(a) which has not expired;

(b) which includes every earlier restriction period any part of which runs concurrently with it; and

(c) the commencement date of which, from time to time, is the commencement date of the earliest restriction period which runs concurrently with it;

"free surrender value" means the value of the consideration which the long-term insurer would provide if the policy is surrendered on the day preceding the date of commencement of an extended restriction period;

"fund member policy" means a long-term policy other than a fund policy -

(a) of which a fund is the sole policyholder;

(b) under which a specified member of the fund (or the surviving spouse, child, dependent or nominee of the member) is the life insured; and

(c) which is entered into by the fund for the purpose of exclusively funding the funds' liability to that member (or the surviving spouse, children, dependants or nominees of the member) in terms of the rules of the fund;

Comment [IRFD58]: "Fund member policy" as currently defined in Part 4 also includes a subsection (d) "if the fund holding the policy is a fund contemplated in paragraph (c) of the definition of "benefit fund" in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), only in so far as provision is made therein for unemployment benefits;". Subsection (c) of the definition of "benefit fund" has however been deleted and for this reason subsection (d) in the current definition of "fund member policy" under Part 4 has been omitted.

"linked benefit" means a policy benefit, the value of which is not guaranteed by the long-term insurer and is determined solely by reference to the value of particular assets or particular categories of assets which are specified in the policy and which are actually held by or on behalf of the long-term insurer specifically for the purpose of the policy;

"policy" means a long-term policy, whether entered into before or after the commencement of this Act, excluding -

(a) a reinsurance policy;

(b) a fund policy;

(c) a fund member policy, for as long as no right under the policy is transferred by the fund to a life insured under the policy, or is transferred to any person except another fund for the direct or indirect benefit of a life insured under the policy; or

(d) a living annuity as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

Comment [IRFD59]: To ensure the equal treatment of fund member policies and other policies entered into post retirement in respect of the increases in income draw down.

"policy benefit" means one or more sums of money, services or other benefits, including an annuity, but excluding a loan in respect of a policy or consideration upon the surrender of a policy;

"premium" means the premium which is stipulated in the policy, or otherwise agreed upon between the parties to the policy, to be provided to the long-term insurer, including any part of a premium;

"premium period" means one of a succession of periods, each of 12 months' duration, the first of which begins on, and ends 12 months after, the first day of the month in which the first premium, or any part thereof, is received by the long-term insurer or, if it is a later date, the first day of the month in which the undertaking of the long-term insurer to provide policy benefits under the policy, becomes operative;

"restricted amount" means an amount equal to -

(a) the aggregate of the free surrender value, and the total value of the premiums received by the long-term insurer during the extended restriction period concerned, plus interest on the free surrender value and each premium at the rate of 5 per cent per annum compounded annually; less

(b) the aggregate of all payments already made by the long-term insurer in respect of the policy, whether as a policy benefit (other than a policy benefit referred to in subregulation (2) of regulation 4.2) or upon the surrender of any part of the policy, during the extended restriction period concerned, plus interest on each payment at 5 per cent per annum compounded annually;

"restriction period" means a period of 5 years which commences, if the date concerned is 1 January 1994 or later -

(a) on the date when the first premium period begins; or

(b) during a premium period after the first such period, on the first day of the month in which an excess premium is received by the insurer.

4.1A Application of this Part

(1) This Part does not apply to a policy that is a tax free investment contemplated in section 12T of the Income Tax Act, 1962 (Act No. 58 of 1962).
[R. 4.1A inserted by GNR.170 of 25 February 2015.]

4.2 Limitations on policies

(1) Subject to subregulations (2), (3), (4) and (5), a long-term insurer, and any person who acts as intermediary between a long-term insurer and any person in respect of a policy or proposal for a policy, shall not undertake to provide, or provide -

(a) a policy benefit under a policy during an extended restriction period;

(b) upon the full or partial surrender of a policy during an extended restriction period -

(i) if the policy has previously been partially surrendered during the extended restriction period concerned, any further consideration; or

(ii) if the policy has not been previously partially surrendered during the extended restriction period concerned, any consideration the value of which exceeds the restricted amount less the capital (excluding capitalised interest) of a loan already provided in respect of the policy during that extended restriction period:

Provided that where the policy is fully surrendered and the full value of the consideration to be provided thereupon exceeds the amount thus determined by not more than R10 000 the full consideration may be provided;

Comment [IRFD60]: Adjusted to better align with CPI.

(c) a loan under or on security of a policy during an extended restriction period -

(i) if such a loan has previously been provided in respect of the policy during the extended restriction period concerned; or

(ii) if such a loan has not previously been provided in respect of the policy during the extended restriction period concerned, the amount of which exceeds the restricted amount; or

(d) directly or indirectly, by means of one or more policies, during an extended restriction period, any benefit (whether as policy benefits or loans in respect of policies or consideration upon the surrender of policies, or any combination thereto) which achieves substantially the result that is achieved by an annuity, but which is not, and is not expressly stipulated in the policy or policies to be, an annuity.

(2) Subregulation (1)(a) shall not apply to a policy benefit which is to be provided and is provided under the policy upon -

(a) the life of a life insured having ended;

(b) the life of a life insured having begun;

(c) a health event occurring;

(d) a disability event occurring;

(e) retrenchment occuring.

Comment [IRFD61]: To extend the grounds on which the full value of the policy may be paid in the interests of policyholders.

(3) Subparagraph (1)(a) shall not apply to a policy benefit which is an annuity -

(a) the payments of which are to be made, and are made, at intervals not exceeding 12 months;

(b) at least one of the payments of which is to be made and, except due to the prior death of the life insured, is made, within 31 days before the expiry of the extended restriction period concerned; and

(c) the total amount of the payments of which in any period of 12 months does not differ, by a rate of more than 20 per cent, from the total amount of the payments thereof in the immediately preceding period of 12 months, except in the case of an annuity -

(i) which constitutes a linked benefit, where the difference, during the period concerned, results solely from the determination of the value of the relevant assets;

(ii) payable in terms of a policy with two or more policyholders or lives insured and where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the death of one of those policyholders or lives insured; or

(iii) where the difference results solely from a reduction in the annuity payable during the period concerned consequent upon the surrender of a part of the policy.

(4) Subregulation (1) shall not apply in the event of -

(a) the death, placement under curatorship or sequestration of the estate of a policyholder who is a natural person; or

(b) the winding-up, liquidation, placement under curatorship or judicial management, by an order of Court, of a policyholder which is a juristic person.

(5) Subregulation (1)(c) and (d) shall not apply to a premium advance made under non-forfeiture provisions in a policy.

4.2A Maximum fees, penalties or any other charges on loans

(1) Where the terms of a loan on the security of a long-term policy provide for the charging of interest at a stated fixed rate, whether simple or compound interest, an insurer may only apply such interest to the capital amount of the loan and not to any other cost or loss in respect of the loan.

Comment [IRFD62]: To be specific as to the amount on which interest may be charged.

(2) Where the terms of a loan on security of a long-term policy do not provide for the charging of interest, an insurer may not impose any fees, penalties or other charges in respect of the loan in excess of an amount equal to the maximum causal event charge that the insurer would have been permitted to charge if the capital amount of the loan had been the amount surrendered in terms of a causal event referred to in paragraph (d) or (f) of the definition of causal event in Part 5A.

Comment [IRFD63]: To provide for the inclusion of a provision that stipulates that fees, penalties or any other charges imposed in respect of policy loans may not exceed what would have been imposed as causal event charges had the policy loan been a causal event.

4.3 General exclusion

This Part shall not apply in respect of anything done, before or after the commencement of this Part, in relation to a policy entered into before the

commencement of this Part if, from a date prior to 1 March 1993, the policy expressly provided, in writing, for it to be done.

PART 5
REQUIREMENTS AND LIMITATIONS REGARDING THE VALUES AND BENEFITS OF POLICIES
(Section 54)

PART 5A
POLICIES OTHER THAN POLICIES TO WHICH PART 5B APPLIES

5.1 Application of this Part 5A, and definitions
[Heading substituted by GN R952/2008]

This Part 5A applies to policies other than policies to which Part 5B applies, and in this Part 5A, unless the context indicates otherwise -
[Sentence following heading substituted by GN R952/2008]

"actuarial basis", in relation to a policy, means the underlying actuarial rules, specifications and formulae in terms of which the policy operates, which:

(a) in compliance with the Act, are approved by the statutory actuary of the insurer, in particular for the purposes of sections 46 and 52; and

(b) if and while the Insurance Act, 1943 applied to the policy, in compliance with that Act, were approved by the valuator of the insurer, in particular for the purposes of sections 34 and 62(2) of that Act;

"basic premium" means the premium, including a premium paid by virtue of a premium-waiver benefit, less charges (if any) deductible from the premium for rider-benefits;

"basic risk benefit" means a risk benefit for which the charge is determined periodically with reference to changes in factors pertaining to the risk, including but not limited to the age of the life insured, the amount of the risk cover, or the investment value of the policy, but excluding a rider benefit;

"benefit" means a policy benefit, including a consideration payable upon the full or partial surrender of a policy, but excluding a loan in respect of a policy;

"causal event", in relation to a policy, means one of the following events:

(a) the policy becomes fully paid-up;

(b) the basic premium is reduced, without the policy thereby coming to an end or becoming fully paid-up;

(c) the remaining policy term or the remaining premium-paying term is reduced, without the policy thereby coming to an end or becoming fully paid-up;

(d) the policy is surrendered in part, other than for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or a part of the policy comes to an end for another reason (other than because risk cover under the policy has come to an end);

(e) the policy, in the case of a fund member policy, is surrendered in part for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956;

(f) the policy is surrendered in full, other than for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or the policy comes to an end for another reason (other than because the policy has reached its maturity date); or

(g) the policy, in the case of a fund member policy, is surrendered in full for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956;

"causal event charge" means a charge occasioned by and pertaining to a causal event;

"charge" means a charge stipulated in a policy or its actuarial basis, whether or not the actuarial basis has been expressly incorporated in the policy, which charge is deductible in respect of the policy in accordance with its terms or actuarial basis;

"come to an end" means that the final benefit under a policy has become payable, including in the case of a fund member policy for the purpose of a transfer from one fund to another in terms of section 14 of the Pension Funds Act, 1956, or that the policy has lapsed without a benefit becoming payable;

"dependant" has the meaning assigned in section 1 of the Pension Funds Act, 1956;

"effective date" means 1 December 2006;

"excluded policy" means:

(a) a fund policy;

(b) a reinsurance policy;

(c) a policy that provides risk benefits only;

(d) a whole-life policy that provides risk benefits and has an investment value or a materially equivalent value referred to in regulation 5.2(2)(b), and in respect of which policy, immediately before a causal event, the ratio of the aggregate of the sums insured of all basic risk benefits to the monthly basic premium (or the monthly equivalent where recurring premiums are not paid monthly) is greater than the threshold ratio in the table below:

Age next birthday of the life insured at the inception of the policy	Threshold ratio
Up to and including 30	480
31	468
32	456
33	444
34	432
35	420
36	408
37	396

38	384
39	372
40	360
41	348
42	336
43	324
44	312
45	300
46	288
47	276
48	264
49	252
50	240
51	228
52	216
53	204
54	192
55	180
56	168
57	156
58	144
59	132
60 and above	120

(e) and any other policy that provides primarily risk benefits;

"fund member policy" means a policy -

(a) of which a fund is or was the policyholder; and

(b) which is or was entered into by the fund for the purpose of funding exclusively the fund's liability to a particular member (or to the surviving spouse, children, dependants or nominees of the member) in terms of the rules of the fund;

"growth rate" means, over a given period, the positive or negative investment return declared for a portfolio, which investment return is net of those portfolio charges that are deducted before the declaration of the investment return, and in the case where a bonus is declared is inclusive of vested and non-vested bonuses;

"insurer" means a long-term insurer;

"investment value" means the value of a policy:

(a) calculated using a method commonly referred to as a back-end loaded basis, by accumulating the basic premium less deductions at the growth rate that applies to the policy, which deductions comprise:

(i) benefits paid, excluding basic risk benefits and rider-benefits;

(ii) charges for basic risk benefits;

(iii) charges deducted when benefits are paid or the policy is altered;

(iv) charges stipulated as a fixed amount, which amount, over the full term of the policy, is designed to remain unchanged or is designed to be increased at a specified rate at regular intervals;

(v) charges stipulated as a percentage or proportion of premiums, which percentage or proportion is designed to remain unchanged over the full term of the policy; and

(vi) those portfolio charges that are deducted after the declaration of the growth rate, where, in the case of general portfolio charges deducted after the declaration of the growth rate, their percentage or proportion of the value of the portfolio is designed to remain unchanged over the full term of the policy;

provided that in determining the growth rate to be applied for the purposes of this calculation, the percentage or proportion of the value of the portfolio for general portfolio charges that are deducted before the declaration of the growth rate, is designed to remain unchanged over the full term of the policy; and

(b) adjusted, where the growth rate that applies to the policy does not follow the fluctuation in the value of the portfolio on a daily basis, and where that is required by the terms or actuarial basis of the policy, by a market-adjustment factor to take into account the difference between the value of the policy so calculated and the value of the portfolio;

"member", in relation to a fund member policy, means the member of the fund in respect of whom the fund had or has taken out the policy;

"nominee", in relation to a member, means a nominee of the member contemplated in the rules of the fund;

"policy" means a long-term policy, whether entered into before or after the commencement of the Act;

"portfolio" means the one or more investment funds representing the underlying assets of a policy;

"portfolio charges" means charges deducted from a portfolio, being:

(a) "specific portfolio charges", namely charges for specific expenses, which expenses include but are not limited to taxes, statutory levies, investment expenses (including investment performance fees), and investment guarantees; and

(b) "general portfolio charges", namely management charges, capital charges and other stipulated general charges, which general portfolio charges are stipulated as a percentage or proportion of the value of the portfolio;

"rider-benefit" means a risk benefit for which the charge is a certain amount or a percentage of the premium or is otherwise fixed, which risk benefit excludes a basic risk benefit;

"this Part" means this Part 5A;
[Definition of "this Part" substituted by GN R952/2008]

"universal whole of life policy" means a policy other than a fund member policy that is a whole-life policy that is not an excluded policy and –

(a) that provides risk benefits and has an investment value or a materially equivalent value referred to in regulation 5.2(2)(b); and

(b) in respect of which the underlying actuarial basis of the policy, whether or not the actuarial basis has been expressly incorporated in the policy, provides that, at inception of the policy, not less that eighty five percent (85%) of the total premium payable by the policyholder is allocated towards the risk benefits;

Comment [IRFD64]: To give effect to 5.4(6).

"values" means all values of a policy including, but not limited to, its investment value, its remaining value and other values contemplated in section 52(2), and its maturity value;

"variable premium increase" means an increase in an existing recurring premium payable by a policyholder under a policy, which increase is not a regular contractual premium increase provided for and specified in the policy at the start of that policy.

Comment [IRFD65]: To give effect to Proposal PP of RDR Phase 1. See regulation 5.10.

5.2 Basis for determination of values and benefits of policies

(1) The values and benefits of a policy, and charges in respect of the policy, are determined, over the full term of the policy, in accordance with its terms and its underlying actuarial basis, whether or not the actuarial basis has been expressly incorporated in the policy.

(2) Notwithstanding anything to the contrary in the terms or actuarial basis of a policy which is not an excluded policy, and in respect of which a causal event has occurred on or after 1 January 2001, but subject to regulation 4.2;

(a) where the terms or actuarial basis of that policy make provision for the calculation of an investment value as described in the definition "investment value", regulations 5.3 to 5.6 apply to that policy; or

(b) where the terms or actuarial basis of that policy do not make provision for the calculation of an investment value as described in the definition "investment value", the values or benefits of that policy upon or immediately after the causal event must be, as certified by the insurer's statutory actuary, materially equivalent to such values or benefits as determined in accordance with regulations 5.3 to 5.6 for a policy contemplated in paragraph (a).

5.3 Fund member policies

(1) Where a causal event occurred in respect of a fund member policy on or after 1 January 2001, but before the effective date, and the insurer on account of that causal event deducted causal event charges which in total exceed the maximum prescribed in subregulation (2), the insurer must:

(a) if the policy has not come to an end before the effective date, within 6 months after the effective date credit the policy with the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") plus interest on the excess amount calculated in accordance with regulation 5.5; or

(b) if the policy has come to an end before the effective date, and if the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") is R150 or more, upon the written request of the member, or in the case of a deceased member upon the written request of the dependants or nominees of the member, which request in every case must be received by the insurer within three years after the effective date, within 6 months after having received the written request pay the excess amount plus interest on the excess amount calculated in accordance with regulation 5.6, less any tax that must be deducted, to the member or to the dependants or nominees of a deceased member.

(2) The maximum deductible charges for purposes of subregulation (1) are:

(a) where the causal event is one contemplated in paragraph (a), (c),(f) or (g) of the definition "causal event", 35% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 35% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (d) or (e) of the definition "causal event", 35% of the amount by which the investment value immediately before the causal event has been reduced.

(3) Where a causal event occurs in respect of a fund member policy on or after the effective date but before 1 January 2018, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).

Comment [IRFD66]: To facilitate the new subregulations (5) to (11).

(4) The maximum deductible charges for purposes of subregulation (3) are:

(a) where the causal event is one contemplated in paragraph (a), (c), (f) or (g) of the definition "causal event", 30% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 30% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (d) or (e) of the definition "causal event", 30% of the amount by which the investment value immediately before the causal event has been reduced.

(5) Where a causal event occurs in respect of a fund member policy during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Timing of causal event	Maximum if causal event is one contemplated in the following paragraph of the definition "causal event":		
	for purposes of paragraph (a), (c), (f) or (g), the maximum percentage below of the investment value	for purposes of paragraph (b), the maximum percentage of the investment value immediately before the	for purpose of paragraph (d) or (e), the maximum percentage below of the amount by which the investment

	immediately before the causal event:	causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:	value immediately before the causal event has been reduced:
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%
On or after 1 January 2019 but before 1 January 2020	18%	18%	18%
On or after 1 January 2020 but before 1 January 2021	16%	16%	16%
On or after 1 January 2021 but before 1 January 2022	14%	14%	14%
On or after 1 January 2022 but before 1 January 2023	12%	12%	12%
On or after 1 January 2023 but before 1 January 2024	11%	11%	11%
On or after 1 January 2024 but before 1 January 2025	10%	10%	10%
On or after 1 January 2025 but before 1 January 2026	9%	9%	9%
On or after 1 January 2026 but before 1 January 2027	8%	8%	8%
On or after 1 January 2027 but before 1 January 2028	7%	7%	7%
On or after 1 January 2028 but before 1 January 2029	6%	6%	6%
On or after 1 January 2029	5%	5%	5%

5.4 Policies other than fund member policies

(1)(a) Where a causal event occurred in respect of a policy other than a fund member policy on or after 1 January 2001, but before the effective date, and the insurer on account of that casual event deducted causal event charges which in total exceed the maximum prescribed in subregulation (2), the insurer must, if the policy has not come to an end before the effective date, within 6 months after the effective date credit the policy with the amount by which the total causal event charges deducted exceed the prescribed maximum ("the excess amount") plus interest on the excess amount calculated in accordance with regulation 5.5.

(b) Despite paragraph (a), where a policy other than a fund member policy has come to an end before the effective date, no maximum is prescribed with regard to the deduction of causal event charges on account of a causal event.

(2) The maximum deductible charges for purposes of subregulation (1) are:

(a) where the causal event is one contemplated in paragraph (a) or (c) of the definition "causal event", 35% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 35% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) No maximum is prescribed with regard to the deduction of causal event charges on account of a causal event contemplated in paragraph (d) or (f) of the definition "causal event".

(3) Where a causal event occurs in respect of a policy other than a fund member policy on or after the effective date but before 1 January 2018, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (4).

Comment [IRFD67]: To facilitate the new subregulations (5) to (11).

(4) The maximum deductible charges for purposes of subregulation (3) are:

(a) where the causal event is one contemplated in paragraph (a) or (c) of the definition "causal event", 30% of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to 30% multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (d) of the definition "causal event", 40% of the amount by which the investment value immediately before the causal event has been reduced;

(d) where the causal event is one contemplated in paragraph (f) of the definition "causal event", 40% of the investment value immediately before the causal event.

(5) Where a causal event occurs in respect of a policy other than a fund member policy, but that is not a universal life policy, during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Comment [IRFD68]: To provide for the progressive reduction of prevailing causal event charges on legacy products.

Timing of causal event	**Maximum in respect of a causal event contemplated in the following paragraph of the definition "causal event":**		
	for purposes of paragraph (a), (c), (f)), the maximum percentage below of the investment value immediately before the causal event:	**for purposes of paragraph (b), the maximum percentage of the investment value immediately before the causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:**	**for purpose of paragraph (d), the maximum percentage below of the amount by which the investment value immediately before the causal event has been reduced:**
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%

On or after 1 January 2019 but before 1 January 2020	18%	18%	18%
On or after 1 January 2020 but before 1 January 2021	16%	16%	16%
On or after 1 January 2021 but before 1 January 2022	14%	14%	14%
On or after 1 January 2022 but before 1 January 2023	12%	12%	12%
On or after 1 January 2023 but before 1 January 2024	11%	11%	11%
On or after 1 January 2024 but before 1 January 2025	10%	10%	10%
On or after 1 January 2025 but before 1 January 2026	9%	9%	9%
On or after 1 January 2026 but before 1 January 2027	8%	8%	8%
On or after 1 January 2027 but before 1 January 2028	7%	7%	7%
On or after 1 January 2028 but before 1 January 2029	6%	6%	6%
On or after 1 January 2029	5%	5%	5%

(6) Where a causal event occurs in respect of a universal whole of life policy during a period referred to in column 1 of Table A below, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum percentage set out in the corresponding line in column 2 of Table A below.

Comment [IRFD69]: To provide for the progressive reduction of prevailing causal event charges on legacy products, but to recognise the nature of universal whole of life policies.

Timing of causal event	**Maximum in respect of a causal event contemplated in the following paragraph of the definition "causal event":**		
	for purposes of paragraph (a), (c), (f)), the maximum percentage below of the investment value immediately before the causal event:	**for purposes of paragraph (b), the maximum percentage of the investment value immediately before the causal event equal to percentage below multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced:**	**for purpose of paragraph (d), the maximum percentage below of the amount by which the investment value immediately before the causal event has been reduced:**
On or after 1 January 2018 but before 1 January 2019	20%	20%	20%
On or after 1 January 2019 but before 1 January 2020	19%	19%	19%
On or after 1 January 2020 but before 1 January 2021	18%	18%	18%
On or after 1 January 2021 but before 1 January 2022	17%	17%	17%
On or after 1 January 2022	16%	16%	16%

but before 1 January 2023			
On or after 1 January 2023	15%	15%	15%

5.5 Interest on the excess amount

The interest on the excess amount contemplated in regulations 5.3(1)(a) and 5.4(1)(a) is:

(a) calculated from and including the date the excess amount was deducted, to but excluding the date it is credited to the policy; and

(b) at an annual interest rate equal to the growth rate (net of those portfolio charges that are deducted after the declaration of the growth rate) over this period, which annual interest rate is subject to a maximum effective rate of 10% and a minimum effective rate of 0%.

5.6 The interest on the excess amount contemplated in regulation 5.3(1)(b) is:

(a) calculated from and including the date the causal event occurred, to but excluding the date the excess amount is paid to the member or to the dependants or nominees of a deceased member;

(b) for the period from the date the causal event occurred, to and including the date the policy came to an end, at an annual interest rate equal to the growth rate (net of those portfolio charges that are deducted after the declaration of the growth rate) over this period, which annual interest rate is subject to a maximum effective rate of 10% and a minimum effective rate of 0%; and

(c) for the period from and excluding the date the policy came to an end, to but excluding the date the excess amount is paid, at an annual effective rate of 5%.

Comment [IRFD70]: Subregulation no longer relevant.

5.8 Amendments to actuarial basis and values

(1) An insurer must, before giving effect to an amendment made to the actuarial basis of a policy, where that amendment will have the effect of reducing the values or benefits of that policy, inform the Registrar of the amendment. The insurer must also provide the reasons for the amendment.

(2) The Registrar may, if he or she is of the opinion that an amendment contemplated in subregulation (1) was affected to directly or indirectly reduce the impact on the insurer of complying with this Part, direct the insurer to review that amendment.

(3) An insurer must keep a record of amendments contemplated in subregulation(1), which record must be made available to the Registrar on request.

Comment [IRFD71]: Subregulation no longer relevant.

Comment [IRFD72]: Subregulation no longer relevant.

5.9 Variable premium increases in respect of policies to which this Part applies

Despite anything contained in this Part or the regulations, any variable premium increase on or after 1 April 2017 in respect of a policy to which this Part applies is subject to Part 3B and Part 5B and must be regarded as constituting a separate policy for purposes of the application of those Parts.

Comment [IRFD73]: To give effect to Proposal PP of RDR Phase 1. Also see amendment to regulation 3.10 (now regulation 3.11) and definition of "variable premium increase".
"Proposal PP: Commission regulation anomalies on "legacy" insurance policies to be addressed
The commission regulations under the Long-term Insurance Act will be amended to consistently apply the same commission basis to variable premium increases on "legacy" investment products as is currently applied to new investment policies.
This will be used in combination with other measures to help ensure that early termination values on legacy contractual savings products are reduced to reasonable levels within the next few years and that such products deliver fair outcomes for both new and existing customers."

PART 5B
INVESTMENT POLICIES THAT STARTED ON OR AFTER 1 JANUARY 2009

5.10 Application of this Part 5B, and definitions

This Part 5B applies to investment policies that started on or after 1 January 2009, and unless defined differently in this Part 5B or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 5A has the meaning assigned to it in that Part, and -

'causal event charge' means a charge, other than an administration charge contemplated in regulation 5.12(3), occasioned by and pertaining to a causal event;

'charge' means a charge stipulated in a policy, which charge is deductible in respect of that policy in accordance with its terms and its actuarial basis;

'charge percentage', in relation to an investment policy, means 15% reduced on a straight-line basis to 0% over the charge term;

'charge term' means the term during which the insurer may deduct a causal event charge, which term starts on the premium commencement date and is equal to:

(a) in the case of a single premium policy the shorter of -

  (i) 5 years; or

  (ii) the period until the date on which the policy will reach maturity;

(b) in the case of a multiple premium policy -

  (i) 10 years, if the premium term is 20 years or longer;

  (ii) half of the premium term, if the premium term is 10 years or longer but shorter than 20 years;

  (iii) 5 years, if the premium term is 5 years or longer but shorter than 10 years; or

  (iv) the premium term, if the premium term is shorter than 5 years;

'excluded policy' means a policy contemplated in paragraphs (a), (b), (c) and (d) of the definition "excluded policy" in Part 5A;

'investment policy' means a single premium policy or a multiple premium policy, other than an excluded policy;

'payment date', in relation to a premium, means the date on which that premium must be paid in terms of the policy;

'premium commencement date' means the payment date of the only or first premium;

'premium term', in relation to a multiple premium policy, means the shorter of the following periods:

(a) the period for which the premiums are to be paid in terms of the policy - which period, as at the start of the policy, is specified in the policy or is determinable from its written provisions; or

(b) the period for which the premiums are to be paid before a policy benefit is to be provided - excluding where the policy benefit is to be provided on account of a disability event, a health event or the death of a life insured; or

(c) the period for which the premiums are to be paid before a consideration must or may be paid upon the full or partial surrender of the policy - if the amount of the consideration, as at the start of the policy, is specified in the policy or is determinable from its written provisions; or

(d) the longest of the following periods:

(i) 10 years; or

(ii) in the case of a fund member policy- the number of full years from the start of the policy to the 66th birthday of the life insured; or

(iii) the number of full years from the start of the policy to the 75th birthday of the life insured;

'start', in relation to a policy, means when the application for that policy is accepted by the insurer; and

'this Part' means this Part 5B.

5.11 Basis for determination of values and benefits of policies

(1) The values and benefits of an investment policy, and charges in respect of the policy, are determined, over the full term of the policy, in accordance with its terms, which terms must be in accordance with its actuarial basis.

(2) Notwithstanding anything to the contrary in the terms or actuarial basis of an investment policy, but subject to regulation 4.2, where a causal event has occurred in respect of that policy and that policy's terms or actuarial basis do not make provision for the calculation of an investment value as described in the definition of "investment value" in Part 5A, the values or benefits of that policy upon or immediately after the causal event must be, as certified by the insurer's statutory actuary, materially equivalent to such values or benefits as determined in accordance with regulation 5.12 for an investment policy of which the terms or actuarial basis do make provision for the calculation of an investment value as described in the definition "investment value".

5.12 Maximum charges that may be deducted

(1) Where a causal event occurs in respect of an investment policy, the insurer may not on account of that causal event deduct causal event charges which in total exceed the maximum prescribed in subregulation (2).

(2) The maximum deductible charges for purposes of subregulation (1) are:

(a) where the causal event is one contemplated in paragraph (a), (c), (f) or (g) of the definition "causal event", the charge percentage (15% or less) of the investment value immediately before the causal event;

(b) where the causal event is one contemplated in paragraph (b) of the definition "causal event", a percentage of the investment value immediately before the causal event equal to the charge percentage (15% or less) multiplied by the amount by which the basic premium has been reduced divided by the basic premium before it was reduced;

(c) where the causal event is one contemplated in paragraph (d) or (e) of the definition "causal event", the charge percentage (15% or less) of the amount by which the investment value immediately before the causal event has been reduced.

(3)(a) The insurer may, in addition to causal event charges, deduct in respect of any causal event, either during or after the charge term, an administration charge of not more than R300.

(b) Despite paragraph (a), the administration charge must, if necessary, be reduced proportionally so that the investment value immediately prior to the causal event, less the causal event charge and administration charge, is not smaller than 70% of the investment value immediately before the causal event.

5.13 Disclosure

(1) An insurer must ensure that -

(a) when an investment policy is applied for, the prospective policyholder or member is within 30 days from the date of application provided in writing with the information referred to in subregulation (2);

(b) the summary to be provided to the policyholder or member in accordance with section 48 of the Act contains the information referred to in subregulation (2); and

(c) the policyholder or member is at least annually provided with the information referred to in subregulation (2) in writing, by telefax or any appropriate electronic communication reducible to printed form.

(2) The information for purposes of subregulation (1) is -

(a) a summary of the content of the provisions of this Part to the extent that those provisions may be or may become applicable to the policy;

(b) an explanation of what constitutes a causal event in respect of the policy in question;

(c) a statement, expressed as a percentage and, where a Rand value amount is determinable, also as a Rand value amount, of the maximum causal event charges that may be deducted; and

(d) the administration charge that may be deducted when a causal event occurs.

[Part 5B inserted by GN R952/2008]

PART 5C
PRINCIPLES FOR CALCULATION OF CAUSAL EVENT CHARGES

5.1 General principles for the calculation of causal event charges

(1) For purposes of compliance with Parts 5A and 5B, an insurer must consider all causal event charges that arose after 1 January 2001.

Comment [IRFD74]: Principles that insurers must apply when calculating causal event charges in the case of multiple causal events have been introduced. Directive 153A.ii (LT) has largely been incorporated into this Part.

(2) When calculating causal event charges in respect of policies referred to in Part 5A and Part 5B, an insurer must –

(a) take into account the cumulative effect on a policy's investment value of charges that have already been deducted in respect of previous causal events;

(b) on the occurrence of a second or subsequent causal event on a policy, determine the causal event charge for that second or subsequent event by taking into account the cumulative effect of that charge and all prior causal event charges on the policy's investment value;

(c) ensure that the cumulative effect of multiple causal event charges during the life of a policy does not result in the policy's investment value at any time being reduced by a greater portion than would have been the case if, at the time of the first causal event, the maximum causal event charge has been deducted.

(3) For purposes of subregulation (2)(b), the calculation of the cumulative causal event charges and the impact on the policy's investment value may take into account the time value of money, but any simplification applied in the calculation methodology may not result in a reduced policy investment value.

(4) For purposes of subregulation (2)(c), the maximum causal event charge means the lower of –

(a) the highest charge the insurer applies to any one causal event for the type of policy concerned according to the insurer's actuarial basis; and

(b) the highest causal event charge, at the time of the first causal event, provided for in Part 5A, Part 5B or for the type of policy concerned.

(5) In applying the principles in subregulation (2), an insurer must apply the same method of calculation to all policies of the same type.

(6) An insurer must, where the actuarial basis provides for a charge percentage that is less than the maximum prescribed charges, apply the lesser percentage in calculating causal event charges and in determining their cumulative effect.

(7) An insurer must, prior to adjusting the actuarial basis for policies to ensure that these bases are not inconsistent with the minimum principles contained in this Part, inform the Registrar of the proposed amendment and the reasons therefore.

PART 6
BINDER AGREEMENTS

Comment [IRFD75]: This Part incorporates the amendments mooted in the draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014, the finalisation of which was deferred until the publication of the detailed Retail Distribution Review Phase 1 proposals. Comments received on the draft regulations has taken into account.

6.1 Definitions and interpretation

In this Part 6, unless the context indicates otherwise -

"administrative FSP" has the meaning assigned to it in the Codes of Conduct for administrative and discretionary FSPs published in Board Notice No. 79 of 8 August 2003, and amended from time to time, under the FAIS Act;

Comment [IRFD76]: Term has been defined.

"associate" -

(a) has the meaning assigned to it in the General Code of Conduct; and

(b) in addition to paragraph (a), includes, in respect of a juristic person, –

(i) another juristic person that has a significant owner or member of the governing body of such other person that is also a significant owner or member of the governing body of such other person of the first mentioned juristic person; and

(ii) another juristic person that has a person as a significant owner or member of the governing body who is an associate (within the meaning of paragraph (a)) of a significant owner or member of the governing body of the first mentioned juristic person;

"binder agreement" means an agreement contemplated in ;

"binder holder" means a person with whom an insurer has concluded a binder agreement;

"enter into" means any act that results in an insurer becoming liable to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"General Code of Conduct" means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the FAIS Act;

"governing body" means a person or body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the financial institution, directs its affairs or has the authority to exercise the powers and perform the functions of the financial institution, and includes—
(a) the general partners of an *en commandite* partnership or the partners of any other partnership;
(b) the members of a close corporation;
(c) the trustees of a trust; and
(d) the board of directors of a company;

"incidental" means any activity that is necessary or expedient for the performance of a binder function;

"independent intermediary" has the meaning assigned to it in regulation 3.1;

"insurer" means a long-term insurer;

"juristic person" includes—
(a) a company, close corporation or co-operative incorporated or registered in terms of legislation whether in the Republic or elsewhere;
(b) an association, partnership, club or other body of persons of whatever description, corporate or unincorporated; or
(c) a trust or trust fund;

"mandated intermediary" means an independent intermediary that holds a written mandate from a potential policyholder or policyholder that authorises that intermediary, without having to obtain the prior approval of that potential policyholder or policyholder, to perform any act, including termination, in relation to a policy, that legally binds that potential

Comment [IRFD77]: Term has been defined.

Comment [IRFD78]: The draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014 proposed an amendment to this definition to limit potential conflicts of interest inherent in certain binder function-related relationships by extending the scope of prohibited business relationships.
Numerous commentators raised concerns with paragraph (b) of the then proposed definition of "associate". Subsequently the proposes amendment to the definition was reconsidered and no longer includes reference to a "managing executive", but only to significant owners and directors. The definition differs from the definition of "associate" in the Insurance Bill (the latter refers to the IFRS definition of associate) because the definition in the regulations is used in a different context that that of the definition in the Insurance Bill.

Comment [IRFD79]: The proposed amendment to the Binder Regulations under Part 6 of the STIA published 11 July 2014 suggested the inclusion of this definition to clarify what constitutes matters incidental to the matters referred to in section 49A of the Act.
Some commentators criticised this definition and submitted that it is too vague. In our opinion, however, this definition should not be too prescriptive to allow room for a flexible interpretation. If it is too prescriptive it might facilitate circumvention.

policyholder or policyholder, other than an act directed only at changing the underlying investment portfolio of a policy;

"non-mandated intermediary" means a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager;

"policy" means a long-term policy;

"qualifying stake" means in respect of a person that -

(a) is a company, that another person, directly or indirectly, alone or together with a related or interrelated person -

(i) holds at least 15% of the issued shares of the first mentioned person;

(ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the first mentioned person;

(iii) has the ability to dispose of or control the disposal of at least 15% of the first mentioned person's securities; or

(iv) holds rights in relation to the first mentioned person that, if exercised, would result in that other person, directly or indirectly, alone or together with a related or interrelated person -

(aa) holding at least 15% of the securities of the first mentioned person;

(bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the first mentioned person; or

(cc) having the ability to dispose of or direct the disposal of at least 15% of the first mentioned person's securities;

(b) is a close corporation, that another person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;

(c) is a trust, means that another person has, directly or indirectly, alone or together with a related or interrelated person -

(i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;

(ii) the power to appoint at least 15% of the trustees; or

(iii) the power to appoint or change any beneficiaries of the trust;

Comment [IRFD80]: To facilitate the amended definition of "associate".

"renew" means any act that results in the renewal or reinstatement of an insurer's liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"representative" has the meaning assigned to it in regulation 3.1, but excludes any natural person;

"settle a claim" means any act that results in-

(a) the acceptance of partial or full liability under a claim for policy benefits or a part thereof;

(b) the determination of the liability of an insurer under a claim for policy benefits; or

(c) the rejection of or refusal to pay a claim for policy benefits or a part thereof;

where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"significant owner" means a person that, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of another person. A person has the ability referred to in that subsection if -

(a) the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint 15% of the members of the governing body of the other person;

(b) the consent of the person, alone or together with a related or interrelated person, is required for the appointment of 15% of the members of a governing body of the other person; or

(c) the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the other person;

Comment [IRFD81]: To facilitate the amended definition of "associate".

"this Part" means this Part 6;

"underwriting manager" means a person that-

(a) performs one or more of the binder functions referred to in (1)(a) to (e); and

(b) if that person renders services as an intermediary as defined in Part 3A of the Regulation,-

(i) does not perform any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder (including the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund); and

(ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and

Comment [IRFD82]: To align with the amended definition of "services as intermediary".

(c) does not have any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, performing any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and

Comment [IRFD83]: The proposed Binder Regulations proposed an amendment to this definition to extend the definition of underwriting manager to strengthen the intention of the Binder Regulations. Given the functions an underwriting manager performs as the agent of the insurer and the fact that profit sharing is allowed in respect of underwriting managers only, it is essential to ensure that there is no conflict or potential conflict of interest that may significantly impact on the advice or intermediary services provided to a potential policyholder or policyholder. The amendment addresses an observed technical loophole.

"vary" means any act that results in the variation, termination, repudiation or denial of an insurer's liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed, and includes any act declaring a policy void.

6.2 Requirements, limitations and prohibitions relating to binder holders

(1) An insurer, subject to regulation 6.5, may have a binder agreement with one or more of the following persons only -

(a) subject to subregulations (1A), (2) and (3), a non-mandated intermediary;

(b) subject to subregulations (3) and (4), an underwriting manager; or

(c) an administrative FSP.

(1A) An insurer may not have a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of long-term insurance policies relating to the binder functions contemplated in section 49A(1)(b) to (d) of the Act.

(2) A non-mandated intermediary referred to under subregulation (1)(a) may not conduct any business with any mandated intermediary that is an associate of that non-mandated intermediary in relation to the same policy or policies of an insurer.

(3) An underwriting manager referred to under subregulation (1)(b) may not conduct any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary, or an administrative FSP that is an associate of that underwriting manager in relation to the same policy or policies of an insurer.

(4)(a) An underwriting manager referred to under subregulation (1)(b) who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.

(b) Paragraph (a) does not apply if an underwriting manager enters into a binder agreement with an insurer during a termination period referred to in regulation 6.3(1)(s) in respect of a binder agreement with another insurer and that underwriting manager may not perform any binder functions on behalf of that other insurer during that termination period.

6.3 Requirements, limitations and prohibitions relating to binder agreements

(1) A binder agreement must, in addition to those matters provided for under section 49A(2)-

(a) specify if the binder holder is a non-mandated intermediary, an underwriting manager or an administrative FSP;

(b) specify the duration of the agreement;

(c) specify the level and standard of service that must be rendered to a policyholder, where relevant, and to the insurer;

(cA) specify the activities that are incidental to the performance of the binder function or functions, and the level and standard of service that must be rendered in respect of such activities;

(d) require that the binder holder at all times is fit and proper, and has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the binder agreement;

Comment [IRFD84]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(ii) The FSB is questioning the value of allowing insurers to enter into binder agreements with advisers (as opposed to underwriting managers) for purposes other than the "enter into, vary or renew" and "claims settlement" functions.

Comment [IRFD85]: See amendments to Regulation 5.5(2) below.

Comment [IRFD86]: The proposed Binder Regulations proposed an amendment to this paragraph to correct a grammatical error.

Comment [IRFD87]: The proposed Binder Regulations proposed an amendment to these paragraphs to clarify that activities incidental to the matters referred to in section 49A of the Act must be addressed in a binder agreement.

(e) require that the binder holder comply with applicable laws;

(f) specify the Rand value of the remuneration or consideration contemplated under regulation 6.4 payable by the insurer to the binder holder in respect of each policy and generally, or, if the Rand value is not fixed or determinable on entering into the agreement, the basis on which the remuneration or consideration payable will be calculated;

(g) specify the disclosures that must be made and the information that must be provided to a policyholder, and the manner in which such disclosures or information must be made or provided when a binder holder -

(i) enters into, varies or renews a policy;

(ii) determines the wording of a policy;

(iii) determines premiums under a policy;

(iv) determines the value of policy benefits under a policy; or

(v) settles a claim under a policy;

(h) provide for the type and frequency of reporting by the binder holder on the services rendered under the binder agreement;

(i) provide for the manner in and the means by which an insurer will monitor the binder holder's performance under and compliance with the binder agreement;

(j) provide for periodic performance reviews of the binder holder and the regular review of the binder agreement;

(k) specify that the insurer has continued access to policyholder and policy information held by the binder holder;

(l) address confidentiality, privacy and the security of information of the insurer and policy holders;

(m) address ownership of intellectual property;

(n) specify that the binder holder must take the necessary steps to allow the Registrar access to its business and information in respect of the functions performed under the agreement;

(o) include indemnity and liability provisions;

(p) require the binder holder to provide the insurer at least every 24 hours with timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements;

(q) set out any warranties or guarantees to be furnished and insurance to be secured by the binder holder in respect of its ability to fulfill its contractual obligations;

(r) provide for a dispute resolution process;

Comment [IRFD88]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(i) Based on our general supervisory experience and the findings of the recent thematic review of binder arrangements, we believe that conduct standards for binder arrangements require significant strengthening. We are particularly concerned about the inadequate level of ongoing oversight exercised by insurers over binder holders as well as the poor quality of data currently being accessed by insurers from binder holders. It is also evident from current market practices that fee generation remains the primary motivation for the provision of binder mandates to advisers, often at the expense of operational efficiencies, resulting in higher costs to customers.

(s) provide for a termination period, irrespective of the circumstances under which the agreement is terminated (including the lapsing or non-renewal of the agreement), of at least 90 days, that will allow-

(i) the binder holder and insurer to comply with any legislative requirements relating to the policies referred to in the binder agreement; and

(ii) for the transfer or sharing of all electronic and paper-based records in respect of the policies referred to in the binder agreement, including the names and identity numbers of all policyholders, insured persons and beneficiaries; and

(t) provide for business contingency processes, including the continuity of service if the binder holder is placed under curatorship, business rescue, becomes insolvent, is liquidated or is for any reason unable to continue to render the services in accordance with the binder agreement.

(2) Sub-regulation (1)(t) does not prohibit a binder agreement from providing that an insurer may-

(a) limit or prevent a binder holder from performing certain or all binder functions during the termination period; or

(b) take reasonable measures to limit any risks it may be exposed to resulting from or associated with a binder agreement or its termination.

(3)(a) A binder agreement may only provide for matters referred to in section 49A of the Act, this Part and matters incidental thereto, and may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.

(b) A binder agreement may not prohibit an insurer from communicating directly with its policyholders or any independent intermediary.

(4) A binder agreement concluded with a non-mandated intermediary, in addition to the matters provided for under sub-regulation (1), must limit the discretion of the binder holder in respect of-

(a) the maximum value of policy benefits that may be determined under each policy or the maximum value of any claim that may be settled by the binder holder under the policies to which the binder agreement relates;

(b) the morbidity and mortality risk factors, where appropriate, that must be considered by the binder holder when entering into, varying or renewing a policy or determining the value of policy benefits under a policy;

(c) other parameters in accordance with which the binder holder must render the services provided for in the binder agreement; and

(d) any guarantee of policy benefits that may be provided for under an investment policy as defined in Part 3A of the Regulation.

(5) A binder agreement concluded with a non-mandated intermediary may not authorise the binder holder to-

(a) refuse to renew a policy;

(b) reject or refuse to pay a claim for policy benefits or a part thereof;

(c) terminate, repudiate or deny an insurer's liability to provide policy benefits under a policy; or

(d) declare a policy void.

6.3A Governance, oversight and record keeping requirements

(1) An insurer must before concluding a binder agreement and thereafter, on an ongoing basis, identify, assess, measure and manage the risks associated with conducting insurance business through binder agreements to ensure the consistent delivery of fair customer outcomes.

(2) An insurer must regularly assess a binder holder's adherence to the binder agreement, specifically also the binder holder's –

(a) governance, risk management and internal controls;

(b) fitness and propriety;

(c) ability to comply with applicable laws and the binder agreement; and

(d) operational and financial capability, including but not limited to the binder holder's capability to provide access to timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements.

(3) An insurer must promptly take reasonable steps to rectify any non-adherence to a binder agreement.

(4) An insurer must retain a copy of a binder agreement for a period of at least 5 years from the date on which a binder agreement is terminated.

6.5 Exemption

Despite regulation 6.2(1A), (2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(1A), (2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(1A), (2) or (3), exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(1A), (2) or (3), if the Registrar is satisfied that –

(a) no conflict of interest or potential conflict of interest exists; or

(b) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders; and

(c) the person has the operational and financial capability to perform the binder function or to conduct such business.

6.6 Reporting requirements

Comment [IRFD89]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(i) Based on our general supervisory experience and the findings of the recent thematic review of binder arrangements, we believe that conduct standards for binder arrangements require significant strengthening. We are particularly concerned about the inadequate level of ongoing oversight exercised by insurers over binder holders as well as the poor quality of data currently being accessed by insurers from binder holders. It is also evident from current market practices that fee generation remains the primary motivation for the provision of binder mandates to advisers, often at the expense of operational efficiencies, resulting in higher costs to customers.

Comment [IRFD90]: Sub-regulation (4) was inserted to place a positive obligation on insurers to ensure that the agreements are implemented.

Comment [IRFD91]: To address the lack of appropriate recordkeeping by insurers in respect of binder agreements.

Comment [IRFD92]: The whole of Regulation 6.4 have been moved to Part 3C.

Comment [IRFD93]: The sub-regulation has also been revised to accommodate comments received - the ability to apply for exemption has been extended to allow an insurer to also apply for exemption of all entities it conducts business with. Insurer therefore does not have to be a holding company of the entities.

An insurer must, 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s), inform the Registrar in writing and in the format required by the Registrar-

(a) of the date on which the binder agreement will terminate;

(b) of the reasons for the termination of the binder agreement;

(c) how the policies to which the binder agreement relates will be dealt with;

(d) how any legislative requirements relating to the termination of the binder agreement or policies, if one or more policies to which the binder agreement relates will be terminated, will be complied with.

PART 7
TITLE AND COMMENCEMENT

7.1 These regulations are called the Regulations under the Long-term Insurance Act, 1998.

7.2 An insurer must, in respect of the amendment to these regulations that came into operation on 1 April 2017, ensure that -

(a) any agreements or arrangements relating to matters addressed in Part 3 concluded -

(i) before the publication of the amendment to the regulations for public comment in the *Gazette* on [-], are aligned with the regulations as amended by no later than 31 December 2017;

(ii) between the publication of the amendment to the regulations for public comment in the *Gazette* on [-] and 1 April 2017, are aligned with the regulations as amended by no later than 31 July 2017;

(b) any agreements relating to matters addressed in Part 6 concluded before or on 1 April 2017 are aligned with the regulations as amended by no later than 31 December 2017.

[x] The amendment to the Regulations takes effect on 1 April 2017.

Comment [IRFD94]: To be provided for in the Government Gazette on the Amendment to the Regulations.

PART III: AMENDMENTS TO THE REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998

REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998
(ACT NO. 53 OF 1998)

Published under Government Notice R1493 in *Government Gazette* 19495 of 27 November 1998 and amended by:

GN R462	**GG 30988**	**25/4/2008**
GN R1076	**GG 34877**	**23/12/2011**

PART 1
INTERPRETATION

1. Definitions

Comment [IRFD95]: To be deleted as the Insurance Laws Amendment Act, 2008 allowed for capital requirements to be prescribed by Board Notice.

PART 3
LIMITATION ON ASSETS

3.1 Definitions
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PART 5
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Comment [IRFD96]: Amended to align with section 48 of the STIA as amended by the Financial Services Laws General Amendment Act, 2013 (the amendment will be made effective prior to the enactment of the Insurance Bill, 2016) that addresses all remuneration.

PART 5A
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Comment [IRFD97]: To limit the remuneration that may be paid in respect of policy data administration services and to facilitate the implementation of Proposals Z & AA of RDR Phase 1.

Comment [IRFD98]: Aligned with the same term as defined See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*".
Also gives effect to Proposal UU of RDR Phase 1.

Comment [IRFD99]: Principles that insurers must apply when determining any remuneration have been introduced.

Comment [IRFD100]: Sub-regulation moved to Part 5.

Comment [IRFD101]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.

PART 1
INTERPRETATION

1.1 Definitions

In these regulations "the Act" means the Short-term Insurance Act, 1998 and any word or expression to which a meaning has been assigned in the Act shall have the meaning so assigned to it, and –

"independent intermediary" means a person, other than a representative, who renders services as intermediary and includes a Lloyd's correspondent;

Comment [IRFD102]: See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*". Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

"insurer" means a short-term insurer;

"long-term policy" means a long-term policy as defined in the Long-term Insurance Act, 1998;

"Part" means the applicable Part of these regulations;

"policy" means a short-term insurance policy and "insurance policy" has a corresponding meaning;

"representative" means a natural person employed or mandated by a short-term insurer to render services as intermediary only in relation to short-term policies entered into or to be entered into by the short-term insurer;

Comment [IRFD103]: See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*". Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

"Schedule" means the applicable Schedule to the Act;

"section" means the applicable section of the Act;

"services as intermediary" means any act performed by a person on behalf of an insurer or policyholder –

(a) directed towards entering into, varying or renewing an insurance policy; or

(b) with a view to -

(i) maintaining, servicing or otherwise dealing with;

(ii) collecting or accounting for premiums payable under;

(iii) receiving, submitting or processing claims under; or

(iv) providing administrative services, other than policy data administration services as defined in sub-regulation 5.6 in Part 5B performed on behalf of an insurer, in relation to,

an insurance policy;

Comment [IRFD104]: See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*". Please note that the terms have not been aligned with the FAIS Act definitions. Such alignment will only be done once all the RDR proposals have been finalised.

PART 3
LIMITATION ON ASSETS
(Section 30)

Comment [IRFD105]: To be deleted as the Insurance Laws Amendment Act, 2008 allowed for capital requirements to be prescribed by Board Notice.

3.1 Definitions

For the purposes of this Part and section 30 and, unless the context otherwise indicates -

"asset-holding intermediary", in relation to a short-term insurer, means an undertaking, other than a company the shares of which are listed on a licensed stock exchange in the Republic -

(a) which is a subsidiary of the short-term insurer or would be its subsidiary if that insurer were a company;

(b) the management of the investments of which is under the *de facto* control of the short-term insurer; and

(c) which has assets which are regarded and dealt with, for all intents and purposes, as if they were the assets of the short-term insurer;

"associated company" means a company-

(a) which is an associate, as defined in section 25(5), of a short-term insurer;

(b) which exercises control, as defined in section 25(6), over a short-term insurer; or

(c) over which a short-term insurer exercises control as defined in section 25(6), other than a company which is an asset-holding intermediary or a property company;

"call option" means an option contract under which the holder of the option contract has the right but not an obligation, in accordance with the terms of the contract, to purchase (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the call option contract;

"convertible debenture" means a debenture which is convertible into equity shares of a company;

"equity shares" means equity shares as defined in section 1 of the Companies Act;

"linked policy" means a long-term policy in relation to which the liabilities of the long-term insurer are linked liabilities as defined in section 33(2) of the Long-term Insurance Act, 1998;

"long position" means long position as defined in the rules of SAFEX;

"market value", in relation to an asset, means -

(a) in the case of an asset which is listed on a licensed stock exchange and for which a price was quoted on that stock exchange on the date as at which the value is calculated, the price last so quoted;

(b) in the case of an asset which is a long-term policy, the amount which on any day would be payable to the policyholder upon the surrender of the policy on that day;

(c) in any other case, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length, as estimated by the short-term insurer, or by the Registrar if the Registrar is not satisfied with that estimate;

"multiple" means the futures contract's unit of trading in its description;

"n.e.s." means not elsewhere specified in this Part;

"net loans" means the positive amount (if any) by which the aggregate amount of loans made by a short-term insurer to its asset-holding intermediary, exceeds the aggregate amount of loans made to it by that asset-holding intermediary;

"property company" means a company -

(a) whose ownership of -

(i) immovable property; or

(ii) all of the shares in a company -

(aa) whose principal business consists of the ownership of immovable property; or

(bb) which exercises control, as defined in section 25(6), over a company whose principal business consists of the ownership of immovable property; or

(iii) a linked policy, to the extent that the policy benefits thereunder are determined by reference to the value of immovable property, constitutes, in the aggregate, 50 per cent or more of the market value of its assets;

(b) which derives 50 per cent or more of its income, in the aggregate, from -

(i) investments in immovable property;

(ii) investments in another company which derives 50 per cent or more of its income from investments in immovable property; or

(iii) a linked policy to the extent that the policy benefits thereunder are determined by reference to the value of immovable property; or

(c) which exercises control, as defined in section 25(6), over a company referred to in paragraph (a) or (b);

"put option" means an option contract under which the holder of the option contract has the right but not an obligation in accordance with the terms of the contract, to sell (or to make a cash settlement in lieu thereof) the quantity of the underlying asset covered by the put option contract;

"rules of SAFEX" means the rules of SAFEX referred to in section 17 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

"SAFEX" means the South-African Futures Exchange;

Comment [IRFD106]: Moved from Part 1 to here.

"shares" include share stock;

"short position" means short position as defined in the rules of SAFEX.

3.2 General limitation on assets

For the purposes of section 30(1), a short-term insurer shall have assets of the kinds specified in Schedule 1 having a market value which, when expressed as a percentage of the aggregate value of the liabilities of the short-term insurer plus

additional assets, does not exceed the percentage specified in column 2 of the Table to this Part in relation to the particular kinds of categories of assets specified in column 1 of that Table.

3.3 Assets of asset-holding intermediary

For the purposes of regulation 3.2, the assets of the kinds set out in Schedule 1 of an asset-holding intermediary of a short-term insurer, other than a claim thereof against that short-term insurer, shall be deemed to be assets of the short-term insurer -

(a) in place of the net loans made by it to the asset-holding intermediary, to the extent determined in accordance with the formula -

$$\frac{A}{B} \times C$$

(b) in place of its shares, other than equity shares, in the asset-holding intermediary, to the extent determined in accordance with the formula -

$$\frac{A}{B} \times D$$

(c) in place of its equity shares in the asset-holding intermediary, to the extent determined in accordance with the formula -

$$\frac{E}{F} \times G$$

in which formulae -

A represents the market value of each asset or kind or category of assets specified in column 1 of the Table to this Part of the asset-holding intermediary;

B represents the aggregate market value of all the assets of the asset-holding intermediary;

C represents the amount of any claim arising from any net loans to the asset-holding intermediary;

D represents the value of shares, other than equity shares, held by the short-term insurer in the asset-holding intermediary, plus or minus the amount to be apportioned to those shares by virtue of the excess or shortfall of the assets of the asset-holding intermediary over its liabilities;

E represents A minus the sum of the amounts determined in accordance with the formulae referred to in paragraphs (a) and (b);

F represents the value of the equity shares held by the short-term insurer in the asset-holding intermediary,

G represents the aggregate value of all equity shares of the asset-holding intermediary.

3.4 Liabilities of asset-holding intermediary

For the purposes of regulation 3.2, the liabilities of an asset-holding intermediary of a short-term insurer, other than a claim of the short-term insurer against that asset-

holding intermediary, shall be deemed to be liabilities of the short-term insurer to the extent determined in accordance with the formula -

$$A \times \frac{B}{C}$$

in which formula -

A represents the aggregate value of those liabilities, plus the value of those of the shares, other than equity shares, in the asset-holding intermediary concerned, which are not owned by the short-term insurer concerned;

B represents the value of the equity shares held by the short-term insurer in the asset-holding intermediary;

C represents the aggregate value of all equity shares of the asset-holding intermediary.

3.5 Deemed assets

For the purpose of regulation 3.2, there shall be deemed as assets of a short- term insurer, or, where appropriate, its asset-holding intermediary, in place of the market value of an asset thereof which is a linked policy, those assets of the particular kinds or categories specified in Schedule 1 to the extent, in respect of each such particular kind or category, of an amount which bears the same proportion to the market value of the linked policy as each of those kinds or categories of assets by reference to the value of which the policy benefits are to be determined, is stated in terms of the policy (or, if not so stated, is estimated by the long-term insurer which is liable under the policy), bears to the total of all of the assets to which the policy is linked.

3.6 Futures contracts

(1) For the purposes of regulation 3.2, a futures contract shall be deemed to be the asset or kind of asset to which the futures contract relates. The exposure in consequence of concluding a futures contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned, and the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of a purchased futures contract (long position) shall be added, while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced, and the exposure arising from the use of a sold futures contract (short position) deducted from the particular assets or category of assets while the assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased.

(2) The balance of any margin deposit shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

(3) For the purposes of this paragraph “exposure” means the number of contracts x multiple x current price, where the current price shall be the “mark-to-market” as defined in the rules of SAFEX on the reporting date.

3.7 Option contracts

(1) For the purposes of regulation 3.2, an option contract shall be deemed to be the asset or kind of asset to which the option contract relates. The exposure in consequence of concluding an option contract shall be included in the calculation of the overall exposure to the particular asset or category of assets concerned and the assets of the

kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be adjusted accordingly. The exposure arising from the use of an option contract resulting in a positive holding shall be added to the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be reduced. The exposure arising from the use of an option contract resulting in a negative holding, shall be deducted from the particular asset or category of assets while assets of the kind specified in item 1, 2, 16(5)(d) or 18 of the Table to Schedule 1 shall be increased. A positive holding constitutes a call option bought (long call) and a put option sold (short put), and a negative holding constitutes a call option sold (short call) and a put option bought (long put).

(2) The balance of any margin shall be deemed to be an asset of the kinds specified in items 2 and 16(5)(b) of the Table to Schedule 1.

(3) For the purposes of this regulation "exposure" means the number of contracts x delta x the market value of the underlying asset or category of assets, where "delta" represents the change in the option contract premium associated with one percentage point move in the market price of the underlying asset.

3.8 Other derivatives

Any derivative in relation to which no basis for valuation has been provided in regulation 3.6 or 3.7 shall be -

(a) deemed to be the asset or kind of asset to which the derivative relates; and

(b) valued as determined by the Registrar.

TABLE
CATEGORIES OF ASSETS
(Regulation 3.2)

In this Table particular items or groups of items referred to in Schedule 1, or particular kinds of assets failing within the more general description of those categories in Schedule 1, are specified in column 1. The maximum permitted holding of those specified assets, calculated according to their market value and expressed as a percentage of the liabilities concerned, is specified in column 2.

Asset limitation number	Column 1 Relevant Schedule 1 item	Column 2 Percentage
01.	Ex item 1:	
01.01	Krugerrand coins - in the aggregate	10
02.	Ex items 2 and 18:	
02.01	In the aggregate in respect of any one institution	20
02.02	In the aggregate in respect of margin deposits held with SAFEX	2,5
03.	Item 3:	
03.01	In the aggregate	20
04.	Ex item 6:	
04.01	In the aggregate in respect of any one body, council or institution	20
05.	Item 7:	
05.01	In the aggregate	20
06.	Item 8:	
06.01	In the aggregate	20
07.	Item 9:	
07.01	In the aggregate	20
08.	Item 10:	
08.01	In the aggregate	20
09.	Item 11:	
09.01	In the aggregate	20
10.	Ex item 12:	
10.01	In the aggregate in respect of any one body corporate	20
11.	Item 13:	

11.01	In the aggregate	20
12.	Ex items 14, 16(1), (2), (3) and (4), 17, 19 and 20:	
12.01	Immovable property, units in a unit trust scheme in property shares, loans or mortgage bonds to or shares or debentures or depository receipts or linked units or loan stock issued by a property company; and linked policies linked thereto -	
12.01.01	In the aggregate	10
12.01.02	In the aggregate in respect of any one property, or property development project or property company	5
13.	Ex item 15:	
13.01	Computer equipment - in the aggregate	5
13.02	Other assets - in the aggregate	2,5
14.	Ex items 16(1), (2) (3) and (4), 17 and 20(a):	
14.01	Shares, convertible debentures or depository receipts or linked units or loan stock, issued by a body corporate, other than an asset-holding intermediary, n.e.s., and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto -	
14.01.01	In the aggregate	65
14.01.02	In the aggregate in respect of ordinary shares, convertible debentures and depository receipts or linked units, issued by a body corporate, other than an asset-holding intermediary, n.e.s., and units in a unit trust scheme in securities other than property shares; and linked policies linked thereto -	50
14.01.02.01	In the aggregate of those which are not listed on a licensed stock exchange or financial market in the Republic or are listed in the Development and Venture Capital Sectors of such an exchange or market	2,5
14.01.02.02	In the aggregate of those which are listed on a licensed stock exchange or financial market in the Republic, otherwise than in the Development and Venture Capital Sectors thereof, and which are issued by any one body corporate which has a market capitalisation -	
14.01.02.02.01	not exceeding R2 000 million	5
14.01.02.02.02	exceeding R2 000 million	10
14.01.03	In the aggregate in respect of preference shares, other than property shares, and linked policies thereto -	40
14.01.03.01	In the aggregate in respect of any one body corporate	2,5
15.	Ex items 16(1) and (2), 19 and 20(b) and (c):	
15.01	Loans to, and claims against, or debentures, other than convertible debentures, issued by, associated companies - in the aggregate	5
16.	Ex item 20(a):	
16.01	Claims under long-term policies other than linked policies -	
16.01.01	In the aggregate in respect of any one long-term insurer	20
17.	Ex items 16(1) and (2), 19 and 20(b) and (c):	
17.01	Claims against individuals, and claims against, loans to or debentures, other than convertible debentures, issued by, bodies corporate, n.e.s. -	
17.01.01	In the aggregate	25
17.01.02	In the aggregate in respect of any one individual	0,25
17.01.03	In the aggregate in respect of any one body corporate	5
18.	Ex item 16(5):	
18.01	Securities, shares, credit balances, deposits, units, margin deposits -	
18.01.01	In the aggregate	15
18.01.02	Ex item 16(5)(b):	
18.01.02.01	In the aggregate	15
18.01.03	Ex item 16(5)(d):	
18.01.03.01	In the aggregate in respect of margin deposits	2,5
18.01.04	Ex item 16(5)(a)(i):	
18.01.04.01	In the aggregate	15
18.01.05	Ex item 16(5)(a)(ii) and (c):	
18.01.05.01	In the aggregate	15
18.01.05.02	In the aggregate of shares, convertible debentures or depository receipts or linked units or loan stock which are listed in a regulated market in a country other than the Republic which the Registrar has approved or are listed in the Development or Venture Capital Sectors of a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate	2,5
18.01.05.03	In the aggregate of ordinary shares, convertible debentures or depository receipts or linked units or loan stock which are listed on a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic which has a market capitalisation; and linked policies linked thereto -	
18.01.05.03.01	not exceeding R2 000 million	5
18.01.05.03.02	exceeding R2 000 million	10

18.01.05.04	In the aggregate of preference shares which are listed on a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic which has a market capitalisation -	
18.01.05.04.01	not exceeding R2 000 million	0
18.01.05.04.02	exceeding R2 000 million	5
18.01.05.05	In the aggregate of securities, other than convertible debentures or depository receipts or linked units or loan stock, which are listed in a regulated market in a country other than the Republic or on a stock exchange outside the Republic, which the Registrar has approved, and which are issued by any one body corporate incorporated outside the Republic; and linked policies linked thereto - in the aggregate in respect of any one body corporate	5
19.	Ex items 16(5)(d) and 18:	
19.01	In the aggregate in respect of margin deposits	2,5
20.	Ex items 14, 15, 16(1), (2), (3), (4) and (5)(a)(ii) and (c), 17, 19, 20 and 21:	
20.01	In the aggregate	70
21.	In respect of any one asset not subjected elsewhere in this Table to a specific limitation	2,5

PART 4
AUTHORISATION OF AND REQUIREMENTS FOR COLLECTION OF PREMIUMS BY INTERMEDIARIES
(Section 45)

4.1 Authorisation

(1) A short-term insurer may, subject to subregulation (2), in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies.

(2) A person shall not be authorised, as contemplated in subregulation (1), unless that person has provided security, to the extent and in accordance withthe requirements of this Part, in respect of his or her obligations in terms of regulation 4.3 by means of -

(a) a guarantee policy issued by a short-term insurer registered to do so in accordance with a guarantee facility created by short-term insurers generally for the purposes of providing such security; or

(b) a contract which, but for the fact that the undertaking concerned is given by a bank, would be a guarantee policy, and under which policy benefits are to be provided in the event of the failure of that person to meet those obligations.

4.2 Requirements in respect of security

The security referred to in regulation 4.1(2) shall -

(a) be in such form as prescribed by the Registrar;

(b) be in favour of the South African Insurance Association (Association Incorporated under Section 21) or, if the Registrar so determines, in favour of the Registrar, for the benefit of all of the short-term insurers with whose authority the premiums are received, held or in any other manner dealt under by the person concerned;

(c) be provided, before any premium is received, held or in any other manner dealt with by the person concerned;

(d) be provided, and renewed annually, in respect of each financial year of the person concerned;

(e) subject to paragraph (f), be for an amount equal to -

(i) in the first two financial years in which the person concerned is authorised to receive, hold or in any other manner deal with premiums, 30 percent of a reasonable estimate of the total premiums which that person expects to receive in that financial year; and

(ii) in every other financial year of the person concerned, 30 percent of the total premiums actually received, held or in any other manner dealt with by that person in the previous financial year; and
[Para. (e) substituted by GN R462/2008]

(f) if the businesses of two or more independent intermediaries are amalgamated, be for an amount determined by reference to the total premiums received, held or in any other manner dealt with in the financial year concerned by the businesses so amalgamated,

(g) Despite paragraph (e), the amount referred to in paragraph (e) may not be less that R100 000 and may not exceed the following maximum amounts in respect of a specific financial / calendar year:

Financial / Calendar year	Maximum amount of guarantee to be provided
1 April 2008 to 31 March 2009 / 2008/09	R 60 000 000
1 April 2009 to 31 March 2010 / 2009/10	R 70 000 000
1 April 2010 to 31 March 2011 / 20010/11	R 80 000 000
1 April 2011 to 31 March 2012/ 2011/12	R 90 000 000
1 April 2012 to 31 March 2013/ 2012/13	R 100 000 000

[Para. (g) inserted by GN R462/2008]

and, for the purposes of this regulation, if the person concerned does not have a particular period of 12 months which constitutes his or her financial year, the reference to a financial year shall be construed as a reference to a period of 12 months.

4.3 Requirements in respect of payment to short-term insurers

(1) A person authorised, as contemplated in regulation 4.1, shall, within a period of 15 days after the end of every month in which premiums are received, pay to the short-term insurer concerned the total amount of those premiums received during that month reduced by the amount of -

(a) any refund premiums then due and payable by such short-term insurer to any policyholder or prospective policyholder represented by such person; and

(b) any consideration payable to that person by the short-term insurer for services as intermediary rendered in respect of the short-term policies concerned.

(2) If more than one person was so authorised by the short-term insurer to receive premiums in relation to the same short-term policy, the period between the receipt thereof from the insured or any person on his or her behalf and payment to the short-term insurer shall not exceed the period contemplated in subregulation (1).

(3) A short-term insurer shall not authorise more than one person as contemplated in subregulation (2) to receive a premium in relation to the same policy if it is a policy forming part of personal lines business.

4.4 Returns by authorised persons

Every person authorised as contemplated in regulation 4.1 shall -

(a) in respect of each period of 12 months referred to in regulation 4.2(e)(ii), furnish the person in whose favour the security is provided, with returns -

(i) in the medium and form prescribed by the Registrar;

(ii) containing information relating to each short-term insurer concerned, of the premiums received after setting off any commission payable to that person for services as intermediary rendered during that period of 12 months;

(iii) within a period of three months after the end of each such period of 12 months; and

(b) in respect of every month in respect of which the authority is in force, furnish the short-term insurer concerned with returns -

(i) in the form required by that short-term insurer;

(ii) containing the information relating to the premiums received, the commission payable to that person and the amounts paid to the short-term insurer; and

(iii) within a period of 15 days after the end of the month concerned.

PART 5
REMUNERATION
(Section 48)

Comment [IRFD107]: For purposes of alignment with section 48 of the STIA as amended by the Financial Services Laws General Amendment Act, 2013 (the amendment will be made effective prior to the enactment of the Insurance Bill, 2016), this part has been amended to apply to all remuneration.

PART 5A
LIMITATION ON REMUNERATION FOR SERVICES AS INTERMEDIARY

5.1 General limitations

(1) No consideration shall directly or indirectly, be provided to, or accepted by or on behalf of, an independent intermediary for rendering services as intermediary, otherwise than by way of commission in monetary form.

(2) No commission shall be paid or accepted otherwise than subject to this Part.

(3) Irrespective of how many persons render services as intermediary in relation to a policy, the total commission payable in respect of that policy shall not exceed the maximum amount payable in terms of regulation 5.3.

5.2 Time and payment of commission

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 short-term insurer or Lloyd's broker.

5.3 Maximum commission payable

No commission shall exceed, in respect of -

(a) a motor policy, 12,5 per cent of the premium payable by a policyholder under the policy; or

(b) any other short-term policy, 20 per cent of the premium payable by a policyholder under the policy.

Comment [IRFD108]: To clarify that commission is payable on gross premium, i.e. the premium as is payable by the policyholder.

5.4 Reversal of commission

If a premium or any part thereof is for any reason refunded by a short-term insurer or Lloyd's broker, 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 short-term insurer by the person to whom it was paid.

5.5 Commission when short-term policy comprises combination of policies

If a short-term policy is a contract comprising a combination of any two or more of the short-term policies defined in section 1 of the Act, 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.

PART 5B
LIMITATION ON REMUNERATION FOR OUTSOURCING

5.6 Application of this Part 5B, and definitions

(1) This Part 5B applies to any outsourcing by an insurer of a binder function or policy data administration services.

(2) In this Part 5B, unless defined differently in this Part 5B or unless the context indicates otherwise, any word or expression to which a meaning has been assigned in Part 6 has the meaning assigned to it in that Part, and -

''cell structure'' means an arrangement under which a person (cell owner) -

(a) holds an equity participation in a specific class or type of shares of an insurer, which equity participation is administered and accounted for separately from other classes or types of shares;

(b) is entitled to a share of the profits and liable for a share of the losses as a result of the equity participation referred to in paragraph (a), linked to profits or losses generated by the insurance business referred to in paragraph (c); and

(c) places or insures insurance business with the insurer referred to in paragraph (a), which business is contractually ring-fenced from the other insurance business of that insurer for as long as the insurer is not in winding-up.

Comment [IRFD109]: To facilitate amendment to regulation 5.9.

"outsourcing" means any arrangement of any form between an insurer and another person, whether that person is regulated or supervised under any law or not, in terms of which that party performs a function that is integral to the nature of the insurance business that an insurer provides, which would otherwise be performed by the insurer itself in conducting short-term insurance business, and includes rendering services under a binder agreement and rendering policy data administration services, but excludes rendering services as intermediary;

Comment [IRFD110]: Definition aligned to the definition of the Financial Sector Regulation Bill.
Facilitates the implementation of Part 5D below.

"policy data administration services" means the managing, recording and updating of policy and policyholder data of an insurer on behalf of that insurer in a manner that –

(a) ensures complete integration between the information technology system of the insurer and the person that provides the services; and

(b) enables the insurer to have continuous access to accurate, up-to-date, complete and secure policy and policyholder data.

Comment [IRFD111]: Facilitates the implementation of Proposals Z & AA of RDR Phase 1.

Remuneration relating to outsourcing of policy data management services

5.7 Limitation on remuneration for policy data administration services

(1) An insurer or any other person must only offer or pay a fee for policy data administration services to any person, and that person must only accept such a fee, if that person has the operational capability to provide such policy data administration services.

(2) The fee referred to in paragraph (a) must not exceed 2% of the total premium payable by policyholders in respect of the policies to which the policy data administration services relate.

(3) Despite subregulation (1) above, an insurer or any other person must not offer or pay a fee for policy data administration services to -

(a) a representative that is a natural person, and that representative must not accept such a fee; or

(b) a binder holder, and that binder holder must not accept such a fee, if that binder holder has a binder agreement with the insurer to perform the service or function contemplated in section 48A(1)(a) of the Act.

Comment [IRFD112]: To allow for remuneration in respect of policy data administration services in a manner that manages conflict of interests and recognises that where a binder agreement is in place, such policy data administration services is deemed to be incidental to the binder function.

Comment [IRFD113]: Text not in tracked changes are part of the existing regulation 6.4 that has been moved here.

Comment [IRFD114]: To give effect to Proposal ZZ of RDR Phase 1. Once consultation and technical work on the appropriate binder fee caps are finalised, which is targeted for quarter 4 of 2016, the maximum %s will be adjusted, if necessary.

"Proposal ZZ: Binder fees payable to multi-tied intermediaries to be capped
Maximum binder fees payable to multi-tied non-mandated intermediaries, per binder activity, will be prescribed. Although further consultation is ongoing on the appropriate caps and the activities to which they will be applied will take place, the table included in the subregulation sets out an initial indicative fee capping model. The proposal does not apply to binder fees paid to underwriting managers in terms of the Binder regulations. Underwriting managers act solely as agents of the insurer; may not sell directly to the customer; and may not do business with a related intermediary. Accordingly, the concerns that arise regarding potential conflicts of interest when an intermediary provides binder services do not arise in the case of an underwriting manager.
For underwriting managers, no regulatory caps on binder fees will apply, but the fees should comply with the general principle that they must be reasonable and commensurate with the cost of performing the function. Underwriting managers may also continue to participate in the underwriting profits of the insurer."

Limitation on remuneration to binder holder

5.8 Remuneration that may be offered or provided to a binder holder

(1) An insurer may pay a binder holder a fee for the services rendered under the binder agreement, which fee must be reasonably commensurate with the actual costs incurred by the binder holder associated with rendering the services under the binder agreement, with allowance for a reasonable rate of return for the binder holder.

(2) Despite subregulation (1), an insurer must not without the prior approval of the Registrar referred to in subregulation (3) pay a binder holder a fee for the services rendered under the binder agreement that exceeds the value listed in the Table below, reflected as a percentage of the aggregate of the total premiums payable by policyholders in respect of the policies to which the binder function relates, if that binder holder is –

(a) a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies;

(b) a non-mandated intermediary that is an associate of another non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies.

Table

BINDER FUNCTION	MAXIMUM FEE PAYABLE
Enter into, vary or renew a policy – section 48A(1)(a)	2%
Determine the wording of a policy - section 48A(1)(b), determine premiums under a policy - section 48A(1)(c) or determine the value of policy benefits under a policy - section 48A(1)(d), or any combination of the above	2%
Settle claims under a policy – section 48A(1)(e)	2%

(3) The Registrar, subject to such conditions as the Registrar may impose, may on application from an insurer grant approval to the insurer to pay a binder holder a fee in excess of the fees referred to in regulation 3.21(2) if the Registrar is satisfied that:

(a) such a fee is appropriate taking into account the nature, scale and complexity of the insurance business to which the relevant binder function relates; and

(b) such a fee will not impede the fair treatment of policyholders;

(c) no conflict of interest or potential conflict of interest exists; or

(d) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders.

(4) Any fee referred to under subregulation (1) payable to a non-mandated intermediary that may perform the service or function contemplated in section 48A(1)(e) of the Act under a binder agreement, may not constitute or be based on a percentage of the difference between an amount claimed or the maximum value of policy benefits payable under a policy and the policy benefits actually provided to a policyholder in settlement of a claim.

(5) Any fee referred to under regulation 5.7 or this regulation 5.8, payable to a non-mandated intermediary that is a binder holder, must be disclosed to a policyholder, which disclosure must be included in the disclosures contemplated under regulation 6.2(1)(g).

5.9 Participation by a binder holder in profits attributable to the policies referred to in a binder agreement

(1) A non-mandated intermediary that is a binder holder, in respect of the services rendered under the binder agreement, may not directly or indirectly receive or be offered any share in the profits of the insurer attributable to the type or kind of policies referred to in the binder agreement.

(2) Subregulation (1) does not prohibit a non-mandated intermediary that is a binder holder and entered into a cell structure with an insurer from receiving dividends in respect of shares held in that insurer as part of that cell structure.

PART 5C
REMUNERATION PAYABLE BY POLICYHOLDER TO INDEPENDENT INTERMEDIARY OR REPRESENTATIVE

5.10 Limitation on remuneration payable by policyholder to independent intermediary or representative

Comment [IRFD115]: The proposed Binder Regulations proposed this amendment to clarify that a non-mandated intermediary with whom an insurer may enter into a cell captive arrangement is not prohibited by the current wording of the sub-regulation from receiving dividends in respect of the ordinary or preference shares owned by it in an insurer.

Comment [IRFD116]: Aligned with the same term as defined See "*Note 1 – Approach adopted in respect of the definitions of independent intermediary, representative and services as intermediary*".
Also gives effect to Proposal UU of RDR Phase 1.
Proposal UU: Remuneration for selling and servicing short-term insurance policies:
Proposed replacement for S8(5) of the STIA to give effect to Proposal UU of RDR Phase 1. Effect will be given to the repeal of section 8(5) in the course of implementing the revised Regulations. The existing 8(5) fee is however perpetuated in the regulations (subject to a few extra safeguards for policyholders in the form of additional requirements) pending the finalisation of the RDR.Refer to Note 2: Amendments to STIA LTIA enacted but not yet made effective under the FSLGA Act 2015.

An independent intermediary or representative may only charge a policyholder a fee in addition to any remuneration contemplated in Parts 5A and Part 5B if that fee -

(a) relates to an actual service provided to a policyholder;

(b) relates to a service other than services as intermediary;

(c) does not relate to any other service for which the independent intermediary has been remunerated by another person;

(d) is reasonable and commensurate with the service rendered; and

(e) the amount and purpose thereof have been explicitly agreed to by the policyholder in writing.

PART 5D
GENERAL PRINCIPLES FOR DETERMINING REMUNERATION

Comment [IRFD117]: Principles that insurers must apply when determining any remuneration have been introduced.

5.11 Application of this Part 5D

(1) In this Part 5D, any word or expression to which a meaning has been assigned in any other Part has the meaning assigned to it in that Part.

(2) This Part 5D, applies to any remuneration offered or provided, directly or indirectly, by or on behalf of a short-term insurer, a policyholder or any other person, or accepted by any other person, for –

(a) rendering services as intermediary;

(b) providing policy data administration services;

(c) performing a binder function or incidental activity under a binder agreement;

(d) rendering any other services under any other outsourcing arrangement; or

(e) services to a policyholder for which a fee referred to in regulation 5.10 is charged.

5.12 General principles for determining remuneration

(1) Remuneration paid to any person for the rendering of any service, activity or function performed by that person, must –

(a) be reasonably commensurate with the actual service, function or activity performed;

(b) not result in any service, function or activity referred to in regulation 5.11(2) being remunerated again;

(c) not be structured in a manner that may increase the risk of unfair outcomes for policyholders; and

(d) not be linked to the monetary value of claims for policy benefits repudiated, paid, not paid or partially paid.

(2) Subregulation (1) applies in addition to any specific requirements relating to remuneration for specific services, activities or functions set out in these regulations.

PART 6
BINDER AGREEMENTS

6.1 Definitions and interpretation

In this Part 6, unless the context indicates otherwise -

"associate"

(a) has the meaning assigned to it in the General Code of Conduct; and

(b) in addition to paragraph (a), includes, in respect of a juristic person, –

(i) another juristic person that has a significant owner or member of the governing body of such other person that is also a significant owner or member of the governing body of such other person of the first mentioned juristic person; and

(ii) another juristic person that has a person as a significant owner or member of the governing body who is an associate (within the meaning of paragraph (a)) of a significant owner or member of the governing body of the first mentioned juristic person;

"binder agreement" means an agreement contemplated in section 48A;

"binder holder" means a person with whom an insurer has concluded a binder agreement;

"FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002);

"General Code of Conduct" means the General Code of Conduct for Authorised Financial Services Providers and Representatives as published in Board Notice No. 80 of 2003, and amended from time to time, under section 15 of the FAIS Act;

"governing body" means a person or body of persons, whether elected or not, that manages, controls, formulates the policy and strategy of the financial institution, directs its affairs or has the authority to exercise the powers and perform the functions of the financial institution, and includes—
(a) the general partners of an *en commandite* partnership or the partners of any other partnership;
(b) the members of a close corporation;
(c) the trustees of a trust; and
(d) the board of directors of a company;

"incidental" means any activity that is necessary or expedient for the performance of a binder function;

"commercial lines business" means short-term insurance business in respect of which the policyholder is a legal person;

Comment [IRFD118]: This Part incorporates the amendments mooted in the draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014, the finalisation of which was deferred until the publication of the detailed Retail Distribution Review Phase 1 proposals. Comments received on the draft regulations has taken into account.

Comment [IRFD119]: The proposed amendment to the Binder Regulations under Part 6 of the STIA published 11 July 2014 proposed an amendment to this definition to limit potential conflicts of interest inherent in certain binder function-related relationships by extending the scope of prohibited business relationships.
Numerous commentators raised concerns with paragraph (b) of the then proposed definition of "associate". Subsequently the proposes amendment to the definition was reconsidered and no longer includes reference to a "managing executive", but only to significant owners and directors. The definition differs from the definition of "associate" in the Insurance Bill (the latter refers to the IFRS definition of associate) because the definition in the regulations is used in a different context that that of the definition in the Insurance Bill.

Comment [IRFD120]: Term has been defined.

Comment [IRFD121]: The draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014 proposed an amendment to this definition to limit potential conflicts of interest inherent in certain binder function-related relationships by extending the scope of prohibited business relationships.
Numerous commentators raised concerns with paragraph (b) of the then proposed definition of "associate". Subsequently the proposes amendment to the definition was reconsidered and no longer includes reference to a "managing executive", but only to significant owners and directors. The definition differs from the definition of "associate" in the Insurance Bill (the latter refers to the IFRS definition of associate) because the definition in the regulations is used in a different contex ...

Comment [IRFD122]: The proposed amendment to the Binder Regulations under Part 6 of the STIA published 11 July 2014 suggested the inclusion of this definition to clarify what constitutes matters incidental to the matters referred to in section 49A of the Act.
Some commentators criticised this definition and submitted that it is too vague. In our opinion, however, this definition should not be too prescriptive to allow room for a flexible interpretation. If it is too prescriptive it might facilitate circumvention.

"enter into" means any act that results in an insurer becoming liable to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"insurer" means a short-term insurer or Lloyd's;

"mandated intermediary" means an independent intermediary that holds a written mandate from a potential policyholder or policyholder that authorises that intermediary, without having to obtain the prior approval of that potential policyholder or policyholder, to perform any act, including termination, in relation to a policy, that legally binds that potential policyholder or policyholder;

"non-mandated intermediary" means a representative or an independent intermediary, other than a mandated intermediary or an underwriting manager;

"policy" means a short-term policy;

"qualifying stake" means in respect of a person that -

(a) is a company, that another person, directly or indirectly, alone or together with a related or interrelated person -

(i) holds at least 15% of the issued shares of the first mentioned person;

(ii) has the ability to exercise or control the exercise of at least 15% of the voting rights attached to securities of the first mentioned person;

(iii) has the ability to dispose of or control the disposal of at least 15% of the first mentioned person's securities; or

(iv) holds rights in relation to the first mentioned person that, if exercised, would result in that other person, directly or indirectly, alone or together with a related or interrelated person -

(aa) holding at least 15% of the securities of the first mentioned person;

(bb) having the ability to exercise or control at least 15% of the voting rights attached to shares or other securities of the first mentioned person; or

(cc) having the ability to dispose of or direct the disposal of at least 15% of the first mentioned person's securities;

(b) is a close corporation, that another person, directly or indirectly, alone or together with a related or interrelated person, holds at least 15% of the members' interests or controls, or has the right to control, at least 15% of members' votes in the close corporation;

(c) is a trust, means that another person has, directly or indirectly, alone or together with a related or interrelated person -

(i) the ability to exercise or control the exercise of at least 15% of the votes of the trustees;

(ii) the power to appoint at least 15% of the trustees; or

(iii) the power to appoint or change any beneficiaries of the trust;

Comment [IRFD123]: To facilitate the amended definition of "associate".

"renew" means any act that results in the renewal of an insurer's liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"representative" has the meaning assigned to it in the Act, but excludes an employee of an insurer;

"settle a claim" means any act that results in -

(a) the acceptance of partial or full liability under a claim for policy benefits or a part thereof;

(b) the determination of the liability of an insurer under a claim for policy benefits; or

(c) the rejection of or refusal to pay a claim for policy benefits or a part thereof;

where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed;

"short-term insurer" for purposes of this Part excludes SASRIA as defined in section 1 and referred to in the Conversion of SASRIA Act, 1998 (Act 134 of 1998);

"significant owner" means a person that, directly or indirectly, alone or together with a related or interrelated person, has the ability to control or influence materially the business or strategy of another person. A person has the ability referred to in that subsection if -

(a) the person, directly or indirectly, alone or together with a related or interrelated person, has the power to appoint 15% of the members of the governing body of the other person;

(b) the consent of the person, alone or together with a related or interrelated person, is required for the appointment of 15% of the members of a governing body of the other person; or

(c) the person, directly or indirectly, alone or together with a related or interrelated person, holds a qualifying stake in the other person;

"this Part" means this Part 6;

"underwriting manager" means a person that -

(a) performs one or more of the binder functions referred to in section 48A(1)(a) to (e); and

(b) if that person renders services as an intermediary as defined in Part 1 of the Regulation, -

(i) does not perform any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and

(ii) renders those services (other than the services referred to in paragraph (i) above) to or on behalf of an insurer only; and

Comment [IRFD124]: The draft Binder Regulations that were published on 11 July 2014 for public comment until 1 September 2014 proposed an amendment to exclude SASRIA from the scope of the Binder Regulations. This is necessary given the fact that the Conversion of SASRIA Act read with the Reinsurance of Damage and Losses Act affords SASRIA a legislative mandate to underwrite specific risks relating to civil and labour unrest. Insurers are obliged to offer SASRIA cover to potential policyholders. SASRIA cover is non-refusable and non-cancellable by insurers. SASRIA policies may only be issued in conjunction with such other policies as are approved by the SASRIA Board.

Comment [IRFD125]: To facilitate the amended definition of "associate".

Comment [IRFD126]: To facilitate the amended definition of "associate".

Comment [IRFD127]: To align with the amended definition of "services as intermediary".

(c) does not have any relationship with an insurer (including the secondment of that person's employees to an insurer or an associate of an insurer, the outsourcing of that person's infrastructure to an insurer or an associate of an insurer, or any similar arrangement) which may result in that person or its employees *de facto*, directly or indirectly, performing any act directed towards entering into, varying or renewing an insurance policy on behalf of an insurer, a potential policyholder or policyholder; and

"vary" means any act that results in the variation, termination, repudiation or denial of an insurer's liability to provide policy benefits under a policy where the person performing the act may do so without the insurer becoming aware of the act until after the act has been performed, and includes any act declaring a policy void.

6.2 Requirements, limitations and prohibitions relating to binder holders

(1) An insurer, subject to regulation 6.5, may have a binder agreement with only one or more of the following persons -

(a) subject to subregulations (1A), (1B), (2) and (3), a non-mandated intermediary; or

(b) subject to subregulations (3) and (4), an underwriting manager.

(1A) An insurer may not enter in respect of commercial lines business into a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies.

(1B) An insurer may not in respect of personal lines business have a binder agreement with a non-mandated intermediary that is authorised to render "advice" as defined in the FAIS Act in respect of short-term insurance policies in respect of the functions contemplated in section 48A(1)(b) to (d) of the Act.

(2) A non-mandated intermediary referred to under subregulation 1(a) may not conduct any business with any mandated intermediary that is an associate of that non-mandated intermediary in relation to the same policy or policies of an insurer.

(3) An underwriting manager referred to under subregulation (1)(b) may not conduct any business with a mandated or non-mandated intermediary, or a representative of a mandated or non-mandated intermediary that is an associate of that underwriting manager in relation to the same policy or policies of an insurer

(4)(a) An underwriting manager referred to under subregulation (1)(b) who is a binder holder of one insurer cannot also be a binder holder of other insurers in respect of the same class of policies defined in section 1 of the Act, unless all the relevant insurers have agreed thereto in writing.

(b) Paragraph (a) does not apply if an underwriting manager enters into a binder agreement with an insurer during a termination period referred to in regulation 6.3(1)(s) in respect of a binder agreement with another insurer and that underwriting manager may not perform any binder functions on behalf of that other insurer during that termination period.

6.3 Requirements, limitations and prohibitions relating to binder agreements

(1) A binder agreement must, in addition to those matters provided for under section 48A(2)-

(a) specify if the binder holder is a non-mandated intermediary or an underwriting manager;

Comment [IRFD128]: The proposed Binder Regulations proposed an amendment to this definition to extend the definition of underwriting manager to strengthen the intention of the Binder Regulations. Given the functions an underwriting manager performs as the agent of the insurer and the fact that profit sharing is allowed in respect of underwriting managers only, it is essential to ensure that there is no conflict or potential conflict of interest that may significantly impact on the advice or intermediary services provided to a potential policyholder or policyholder. The amendment addresses an observed technical loophole.

Comment [IRFD129]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
(iii) The FSB is also questioning the appropriateness of short-term insurers entering into binder agreements with advisers (as opposed to underwriting managers) for commercial lines business generally. The arguments for efficiency and the ease and speed of service that apply in the personal lines space, are typically not applicable to commercial lines business. We are also concerned that in view of the specialist skills required for most commercial covers, outsourcing core underwriting and / or benefit design to potentially conflicted financial advisers, introduces unnecessary underwriting and reinsurance risk. Given the varied scope of commercial lines offerings, it is also difficult to determine appropriate binder fee caps to mitigate the inherent conflict of interest risks that arise. We are therefore considering a proposal to disallow binder agreements with advisers for commercial lines business, in the absence of compelling reasons why such binder agreements would be in the best interest of policyholders. Before finalising this proposal, we will however carry out further analysis of the type and number of commercial lines binder agreements in place with advisers (non-mandated …

Comment [IRFD130]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(ii) The FSB is questioning the value of allowing insurers to enter into binder agreements with advisers (as opposed to underwriting managers) for purposes other than the "enter into, vary or renew" and "claims settlement" functions.

Comment [IRFD131]: See amendment at Regulation 4.6(2) below

Comment [IRFD132]: The proposed Binder Regulations proposed an amendment to this paragraph to correct a grammatical error.

(b) specify the duration of the agreement;

(c) specify the level and standard of service that must be rendered to a policyholder, where relevant, and to the insurer;

(cA) specify the activities that are incidental to the performance of the binder function or functions, and the level and standard of service that must be rendered in respect of such activities;

Comment [IRFD133]: The proposed Binder Regulations proposed an amendment to these paragraphs to clarify that activities incidental to the matters referred to in section 49A of the Act must be addressed in a binder agreement.

(d) require that the binder holder at all times is fit and proper, and has appropriate governance, risk management, internal controls and information technology systems in place to render the services under the binder agreement;

(e) require that the binder holder comply with applicable laws;

(f) specify the Rand value of the remuneration or consideration contemplated under regulation 6.4 payable by the insurer to the binder holder in respect of each policy and generally, or, if the Rand value is not fixed or determinable on entering into the agreement, the basis on which the remuneration or consideration payable will be calculated;

(g) specify the disclosures that must be made and the information that must be provided to a policyholder, and the manner in which such disclosures or information must be made or provided when a binder holder-

(i) enters into, varies or renews a policy;

(ii) determines the wording of a policy;

(iii) determines premiums under a policy;

(iv) determines the value of policy benefits under a policy; or

(v) settles a claim under a policy;

(h) provide for the type and frequency of reporting by the binder holder on the services rendered under the binder agreement;

(i) provide for the manner in and the means by which an insurer will monitor the binder holder's performance under and compliance with the binder agreement;

(j) provide for periodic performance reviews of the binder holder and the regular review of the binder agreement;

(k) specify that the insurer has continued access to policyholder and policy information held by the binder holder;

(l) address confidentiality, privacy and the security of information of the insurer and policyholders;

(m) address ownership of intellectual property;

(n) specify that the binder holder must take the necessary steps to allow the Registrar access to its business and information in respect of the functions performed under the agreement;

(o) include indemnity and liability provisions;

(p) require the binder holder to provide the insurer at least every 24 hours with timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements;

(q) set out any warranties or guarantees to be furnished and insurance to be secured by the binder holder in respect of its ability to fulfill its contractual obligations;

(r) provide for a dispute resolution process;

(s) provide for a termination period, irrespective of the circumstances under which the agreement is terminated (including the lapsing or non-renewal of the agreement), of at least 90 days, that will allow-

(i) the binder holder and insurer to comply with any legislative requirements relating to the policies referred to in the binder agreement; and

(ii) for the transfer or sharing of all electronic and paper-based records in respect of the policies referred to in the binder agreement, including the names and identity numbers of all policyholders, insured persons and beneficiaries; and

(t) provide for business contingency processes, including the continuity of service if the binder holder is placed under curatorship, business rescue, becomes insolvent, is liquidated or is for any reason unable to continue to render the services in accordance with the binder agreement.

(2) Sub-regulation does not prohibit a binder agreement from providing that an insurer may-

(a) limit or prevent a binder holder from performing certain or all binder functions during the termination period; or

(b) take reasonable measures to limit any risks it may be exposed to resulting from or associated with a binder agreement or its termination.

(3)(a) A binder agreement may only provide for matters referred to in section 48A of the Act, this Part and matters incidental thereto, and may not regulate any other arrangement or relationship with the binder holder, irrespective of such other arrangement or relationship being dependent on the conclusion of a binder agreement or that the binder agreement is in addition to or consequential to such other arrangement or relationship.

(b) A binder agreement may not prohibit an insurer from communicating directly with its policyholders or any independent intermediary.

(4) A binder agreement concluded with a non-mandated intermediary, in addition to the matters provided for under sub-regulation (1), must limit the discretion of the binder holder in respect of -

(a) the maximum value of policy benefits that may be determined under each policy or the maximum value of any claim that may be settled by the binder holder under the policies to which the binder agreement relates;

Comment [IRFD134]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(i) Based on our general supervisory experience and the findings of the recent thematic review of binder arrangements, we believe that conduct standards for binder arrangements require significant strengthening. We are particularly concerned about the inadequate level of ongoing oversight exercised by insurers over binder holders as well as the poor quality of data currently being accessed by insurers from binder holders. It is also evident from current market practices that fee generation remains the primary motivation for the provision of binder mandates to advisers, often at the expense of operational efficiencies, resulting in higher costs to customers.

(b) the risk factors that must be considered by the binder holder when entering into, varying or renewing a policy or determining the value of policy benefits under a policy; and

(c) other parameters in accordance with which the binder holder must render the services provided for in the binder agreement.

(5) A binder agreement concluded with a non-mandated intermediary may not authorise the binder holder to -

(a) refuse to renew a policy;

(b) reject or refuse to pay a claim for policy benefits or a part thereof;

(c) terminate, repudiate or deny an insurer's liability to provide policy benefits under a policy; or

(d) declare a policy void.

6.3A Governance, oversight and record keeping requirements

(1) An insurer must before concluding a binder agreement and thereafter, on an ongoing basis, identify, assess, measure and manage the risks associated with conducting insurance business through binder agreements to ensure the consistent delivery of fair customer outcomes.

(2) An insurer must regularly assess a binder holder's adherence to the binder agreement, specifically also the binder holder's –

(a) governance, risk management and internal controls;

(b) fitness and propriety;

(c) ability to comply with applicable laws and the binder agreement; and

(d) operational and financial capability, including but not limited to the binder holder's capability to provide access to timely, comprehensive and reliable data to ensure that the insurer is able to comply with any regulatory data management requirements.

(3) An insurer must promptly take reasonable steps to rectify any non-adherence to a binder agreement.

(4) An insurer must retain a copy of a binder agreement for a period of at least 5 years from the date on which a binder agreement is terminated.

6.5 Exemption

(1) Despite regulation 6.2(1),-

(a) an insurer may conclude a hold-covered binder agreement with a mandated intermediary or a non-mandated intermediary, if-

(i) that agreement provides for the entering into policies on an interim and limited-in-time basis only; and

Comment [IRFD135]: To give effect to certain aspects of Proposal ZZ of RDR Phase 1.
Proposal ZZ: Binder fees to multi-tied intermediaries to be capped):
We have also refined our views on binder arrangements in the following respects:
(i) Based on our general supervisory experience and the findings of the recent thematic review of binder arrangements, we believe that conduct standards for binder arrangements require significant strengthening. We are particularly concerned about the inadequate level of ongoing oversight exercised by insurers over binder holders as well as the poor quality of data currently being accessed by insurers from binder holders. It is also evident from current market practices that fee generation remains the primary motivation for the provision of binder mandates to advisers, often at the expense of operational efficiencies, resulting in higher costs to customers.

Comment [IRFD136]: Sub-regulation (4) was inserted to place a positive obligation on insurers to ensure that the agreements are implemented.

Comment [IRFD137]: To address the lack of appropriate recordkeeping by insurers in respect of binder agreements.

Comment [IRFD138]: The whole of Regulation 6.4 have been moved to Part to Part 3, Sub-Part III.

(ii) the legal liability of the insurer under such policies lapses after a maximum period of 96 hours in respect of personal lines business and 30 days in respect of commercial lines business, unless the insurer, in respect of each policy, confirms its legal liability under that policy in writing prior to the expiry of such period; and

(iii) no fee for the services rendered under the hold-covered binder agreement is payable to the mandated intermediary or non-mandated intermediary by the insurer; and

(b) subject to regulation 6.2(1A), an insurer may conclude a binder agreement with -

Comment [IRFD139]: To give effect to Proposal ZZ of RDR Phase 1 (Binder fees to multi-tied intermediaries to be capped). RDR Phase 1 on page 43 indicated that commercial lines binder agreements with NMIs that give advice will no longer be allowed. See regulation 6.2(2).

(i) a non-mandated intermediary in respect of commercial lines business that is also a mandated intermediary in respect of personal lines business, but not in respect of that commercial lines business; or

(ii) a non-mandated intermediary in respect of personal lines business that is also a mandated intermediary in respect of commercial lines business, but not in respect of that personal lines business.

(2) Despite regulation 6.2(1A), (1B), (2) or (3), the Registrar may on application from an insurer referred to in regulation 6.2(1A), (1B), (2) or (3) or an insurer that is the holding company or associate of more than one person referred to in regulation 6.2(1A), (1B), (2) or (3) exempt, subject to such conditions as the Registrar may impose, the insurer or such person from regulation 6.2(1A), (1B), (2) or (3), if the Registrar is satisfied that -

(a) no conflict of interest or potential conflict of interest exists; or

(b) any conflict of interest or potential conflict of interest is effectively mitigated and will not impede the fair treatment of policyholders; and

(c) the person has the operational and financial capability to perform the binder function or to conduct such business.

Comment [IRFD140]: The sub-regulation has also been revised to accommodate comments received - the ability to apply for exemption has been extended to allow an insurer to also apply for exemption of all entities it conducts business with. Insurer therefore does not have to be a holding company of the entities.

(3)(a) Regulations 6.3(1)(f) and 6.4 do not apply to a hold-covered binder agreement concluded under sub-regulation (1)(a).

(b) For purposes of a hold-covered binder agreement, the timeframes referred to under regulations 6.3(1)(p) and (s) are 96 hours in respect of personal lines business and 30 days in respect of commercial lines business.

6.6 Reporting requirements

An insurer must, 60 days before the expiry of the termination period referred to under regulation 6.3(1)(s), inform the Registrar in writing and in the format required by the Registrar-

(a) of the date on which the binder agreement will terminate;

(b) of the reasons for the termination of the binder agreement;

(c) how the policies to which the binder agreement relates will be dealt with;

(d) how any legislative requirements relating to the termination of the binder agreement or policies, if one or more policies to which the binder agreement relates will be terminated, will be complied with.

PART 7
TITLE AND COMMENCEMENT

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

7.2 An insurer must, in respect of the amendment to these regulations that came into operation on 1 April 2017, ensure that -

(a) any agreements or arrangements relating to matters addressed in Part 3 concluded -

(i) before the publication of the amendment to the regulations for public comment in the *Gazette* on [-], are aligned with the regulations as amended by no later than 31 December 2017;

(ii) between the publication of the amendment to the regulations for public comment in the *Gazette* on [-] and 1 April 2017, are aligned with the regulations as amended by no later than 31 July 2017;

(b) any agreements relating to matters addressed in Part 6 concluded before or on 1 April 2017 are aligned with the regulations as amended by no later than 31 December 2017.

[x] The amendment to the Regulations takes effect on 1 April 2017.

Comment [IRFD141]: To be provided for in the Government Gazette on the Amendment to the Regulations.

PART IV: NOTES

NOTE 1: APPROACH ADOPTED IN RESPECT OF THE DEFINITIONS OF "INDEPENDENT INTERMEDIARY", "REPRESENTATIVE" AND "SERVICES AS INTERMEDIARY"

1. Background and Purpose

The Financial Services Laws General Amendment Act No. 45 of 2013 (the "FSLGAA") repeals certain definitions and amends particular sections in the STIA and LTIA.

Although the FSGLAA has been enacted, the repeal of the definitions of "independent intermediary", "representative" and "services as intermediary", and the amendment of sections 8(5) and 48 of the STIA, and section 49 of the LTIA have not yet been made effective. The effective date of the repeal of these definitions was deferred to align with the implementation of the Retail Distribution Review ("RDR").

2. Proposed treatment of the repealed definitions

To avoid any technical, legal and procedural challenges, the deletion of the definitions (as deleted by the FSLGAA) in the STIA must be made effective before the Insurance Bill becomes effective.

As it has been agreed that these definitions and sections will not be given effect prior to the finalisation of relevant aspects of the RDR, save for changes proposed in the RDR Phase 1 and alignment of the LTIA and STIA (in as far as possible), it is proposed that the current definitions are included in the proposed amendments to the Regulations.

3. Alignment between definitions in the LTIA and STIA Regulations

The ensure consistency, it is deemed prudent to align the definitions of the terms independent intermediary", "representative" and "services as intermediary" in as far as possible.

The Table below assist in understanding how the –

- STIA definitions will be reflected in the STIA Regulations; and
- alignment between the LTIA Regulations and STIA Regulations is proposed to be achieved.

Current definition in STIA	Current definition in LTI Regulations	Proposed aligned definition	Comment
Independent intermediary			
"independent intermediary" means a person, other than a representative, who renders services as intermediary and includes a Lloyd's	**"independent intermediary"** means a person, other than a representative, rendering services as intermediary	**"independent intermediary"** means a person, other than a representative, who renders services as intermediary	It is proposed that the current definition under the STIA, with the exclusion of the reference to Lloyd's correspondent be used. The STIA will continue to refer to Lloyd's. Also see comment under *"services as intermediary"* below.

Current definition in STIA	Current definition in LTI Regulations	Proposed aligned definition	Comment
correspondent			
Representative			
"representative" means a natural person employed - (a) by or working for a short-term insurer and receiving or entitled to receive remuneration; and (b) for the purpose of rendering services as intermediary in relation to short-term policies entered into or to be entered into by the short-term insurer only;	**"representative"** means a person - (a) employed or engaged by a long-term insurer for the purpose of rendering services as intermediary only in relation to policies entered into or to be entered into by - (i) that insurer; (ii) another insurer which is a subsidiary or holding company of that insurer; or (iii) another insurer which has entered into a written agreement with that insurer in terms of which persons employed or engaged by that insurer may render services as intermediary in relation to the other insurer's policies; (b) on conditions of employment or engagement complying with the principle of "Equivalence of Reward", in terms whereof the remuneration paid by an insurer, whether in cash or in kind, shall substantially be in accordance with this Part, as determined by the Registrar, but excludes such a person in respect of whom the Registrar has made a determination under regulation 3.2(5);	Full alignment is not recommended. See next column. Proposed amended definition for STIA: **"representative"** means a natural person employed or mandated by a short-term insurer to render services as intermediary only in relation to short-term policies entered into or to be entered into by the short-term insurer; Proposed amended definition for LTIA: **"representative"** means a person employed or mandated by a long-term insurer to render services as intermediary only in relation to policies – (a) entered into or to be entered into by that insurer; (b) entered into or to be entered into by another insurer which is also part of the group of companies that the insurer is part of; (c) entered into or to be entered into on or after 1 April 2017 by another insurer which has a written agreement with that insurer in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to policies of that other insurer which none of the insurers referred to in paragraphs (i) and	The definitions will remain predominantly the same as they are currently defined in the respective Acts. Full alignment is not recommended because the current ST definition only provides for "natural persons" to be "representatives" whilst LT also allows juristic persons as "representatives". It is worth noting that the words "work for" under the STIA definition and the words "engaged by" under the LTIA definition has been replaced by the words "mandated by". Subsection (a)(iii) of the definition under the LTIA regulations has been further amended to give effect to Proposal V of RDR Phase 1. Part (b) of the definition under the LTIA has moved to sub-regulation 3.2 to strengthen the provisions relating to equivalence of reward and partially give effect to Proposal RR of RDR Phase 1.

Current definition in STIA	Current definition in LTI Regulations	Proposed aligned definition	Comment
		(ii) are registered to underwrite; or (d) entered into prior to 1 April 2017 by another insurer which concluded a written agreement with that insurer prior to 1 January 2017 in terms of which the person employed or mandated by that insurer may render services as intermediary in relation to that other insurer's policies	
Services as intermediary			
"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 short-term policy; or (b) with a view to - (i) maintaining, servicing or otherwise dealing with; (ii) collecting or accounting for premiums payable under; or claims under, a short-term policy	**"rendering services as intermediary"** means the performance by a person other than a long-term insurer or a policyholder, on behalf of a long-term insurer or a policyholder, of any act directed towards entering into, maintaining or servicing a policy or collecting, accounting for or paying premiums or providing administrative services in relation to a policy, and includes the performance of such an act in relation to a fund, a member of a fund and the agreement between the member and the fund;	**"services as intermediary"** means any act performed by a person on behalf of an insurer or a policyholder – (a) directed towards entering into, varying or renewing an insurance policy; or (b) with a view to - (i) maintaining, servicing or otherwise dealing with; (ii) collecting or accounting for premiums payable under; (iii) receiving, submitting or processing claims under; or (iv) providing administrative services, other than policy data administration services as defined in sub-regulation 3.19 in Part 3C performed on behalf of an insurer, in relation to, an insurance policy; <u>and includes any such act in relation to a fund,</u>	The word 'rendering' will be omitted from the term defined in the LTIA regulations to align to the term used in the STIA regulations. The definition was, as far possible, aligned without changing the meaning of the term. The underlined words in the proposed definition are only applicable to the definitions to be included in the LTIA Regulations.

Current definition in STIA	Current definition in LTI Regulations	Proposed aligned definition	Comment
		a member of a fund and the agreement between the member and the fund	