



South African Reserve Bank

Office of the Deputy Governor  
Kuben Naidoo

Dear Insurers

The Prudential Authority (PA) is pleased to communicate that the Insurance Act, 2017 (Act No. 18 of 2017) (Insurance Act) will take effect, as envisaged, on 1 July 2018. The Minister of Finance has signed the necessary Commencement Notice and the gazetting thereof is imminent. The Prudential Committee of the PA has prescribed the Prudential Standards necessary for the effective implementation of the Insurance Act. These will be published on the South African Reserve Bank (SARB) website once the Commencement Notice has been gazetted.

It is therefore prudent to communicate to the insurance industry the PA's approach to the implementation of the Insurance Act on 1 July 2018 (Day 1).

### **Progressive compliance with the Insurance Act and the Prudential Standards related thereto**

Schedule 3 to the Insurance Act sets out the transitional arrangements for implementation of the Insurance Act and the Prudential Standards related thereto, as highlighted below.

Insurers should note that item 13 of Schedule 3 facilitates the incremental implementation of the Insurance Act. It allows the PA to, by notice in the Government Gazette, delay the implementation of a provision of the Insurance Act for a transitional period not exceeding two years from the date when that section took effect; or where practicalities require the progressive or incremental application of a specific provision of the Insurance Act to exempt any insurer, controlling company, key person or significant owner from that provision for a period, and on conditions determined in the notice.

Insurers that are not able to comply with the Insurance Act or the Prudential Standards related thereto on Day 1, as set out in Schedule 3, must within 60 days of Day 1 engage with the PA to discuss any Day 1 non-compliance issues so that the PA may consider how best to address this.

Schedule 3, among other things, provides for the following:

1. That any matter relating to prudential supervision, pending before the PA, under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTI Act) and the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (STI Act) must be concluded by the PA in terms of the LTI Act and STI Act, despite these Acts being amended by the Insurance Act.
2. Every insurer that was registered under the LTI Act or STI Act continues to exist as an insurer, as if it had been licensed under the Insurance Act.

3. Insurers may continue to conduct insurance business for which they had been registered under the STI Act and LTI Act subject to, and in accordance with, the governance, financial soundness, security, reporting and public disclosure obligations imposed under the Insurance Act.
4. The PA, within a period of two years, must convert the registrations of all insurers to licences in accordance with the Insurance Act.

*Before 1 July 2018, the PA will publish, on the SARB website, its implementation process in respect of conversions. The conversion process for a specific insurer will commence once the PA requests, in writing, the insurer to submit the necessary information to it.*

5. An insurer that, on Day 1, fails to comply with the financial soundness requirements, as set out in the Insurance Act and related Prudential Standards, must submit to the PA its scheme or strategy as referred to in section 39 of the Insurance Act.
6. Any reinsurance arrangement entered into with an insurer or reinsurer located in a foreign jurisdiction may continue until the insurer's registration under the LTI Act and STI Act is converted to a licence under the Insurance Act, despite that foreign jurisdiction not having been determined by the PA as equivalent.

*The PA will, before 1 July 2018, publish on the SARB website a Notice on the determination of certain jurisdictions as equivalent foreign jurisdictions.*

7. An insurer whose financial year end falls before 1 July 2018, must, despite the effective date, comply with the reporting obligations imposed under the Insurance Act, in respect of that financial year.

*On 11 April 2018 the PA issued a communication (Insurance Act Communication 1 of 2018) providing clarity on the implications of this requirement.*

8. Any person appointed as a key person and any significant owner of an insurer is deemed to meet the fit and proper requirements of the Insurance Act, subject to the requirements of the Insurance Act, pending the conversion of the insurer.

*These requirements are set out in the Governance and Operational Prudential Standards, specifically GOI 4: Fitness and Propriety of Significant Owners and Key Persons of Insurers. The requirements are similar to those that were set out in set out in Board Notice 158 of 2015, issued under the LTI Act and STI Act. This Board Notice will lapse on 1 July 2018 since the authorising provision for prescribing the Board Notice will be repealed by the Insurance Act on 1 July 2018.*

*The PA must, when considering the conversion, approve the directors and auditors of the insurers and also ensure that the insurers demonstrate and certify that their key persons (other than directors and auditor) and significant owners meet the prescribed fit and proper requirements.*

9. Every insurer conducting any business other than insurance business in South Africa or conducting any business, including business similar to insurance business outside South

Africa, may continue to conduct that business until its registration under the previous Acts is converted to a licence.

*As part of the conversion process, an insurer must apply for approval to conduct any business other than insurance business in South Africa, including any business performed on behalf of another person or any business as well as a business similar to insurance business, outside South Africa.*

10. An insurer that is part of a group of companies must, by 1 September 2018, notify the PA thereof, and provide the PA with detailed information on the structure of the group of companies, its holding company and intra-group transactions.

### **Applications and notifications under the Insurance Act and Prudential Standards**

Some application and notification forms relating to the Insurance Act and prudential standards will be available on the SARB website, shortly. However, additional forms will be added as they become available.

Where an application form and/or notification form is available, an application and/or notification must be made in the format provided. No other format will be accepted.

However, if a form for a specific application or notification is not available on the website, insurers are still obliged to secure the approval of, and/or notify the PA where such approval and/or notification is required under the Insurance Act and/or related Prudential Standards. These applications and notifications must be submitted in writing and be duly motivated, and the format of the application and notification will be at the insurer's discretion.

Please note that further communication will be issued on the exact processes that insurers need to follow in this regard.

### **The Insurance Act and the conduct legislative framework**

The effective date of the Insurance Act will see the separation of the prudential regulatory framework from the conduct of business regulatory framework. The Insurance Act constitutes the prudential regulatory framework and the LTI Act and the STI Act constitute the conduct of business regulatory framework, until the proposed Conduct of Financial Institutions Bill has been enacted.

The insurance regulatory framework is an integrated prudential and conduct framework. Consequently, the implementation of the Insurance Act and related Prudential Standards require amendments to the subordinate conduct-related legislative framework (Regulations and Policyholder Protection Rules (PPRs) made under the LTI Act and STI Act) to avoid regulatory gaps that could undermine a coordinated and harmonised approach to insurance regulation and supervision.

The above-mentioned amendments are required since the Insurance Act –

- introduces new authorisation classes of insurance business that are significantly more granular than the current 'classes' or types of policies provided for under the LTI Act and STI Act;

- defines various concepts in a manner that differs from how these concepts are currently defined in the LTI Act and STI Act; and
- provides for a two-year period during which the existing registrations under the LTI Act and STI Act must be converted to licences, under the Insurance Act. The conduct legislative framework must therefore appropriately deal with registered insurers and licensed insurers, as and when applicable. Meaning that the existing terminology in the LTI Act and STI Act must apply to registered insurers, and the Insurance Act terminology must apply to licensed insurers.

However, this does not impact on the implementation and compliance with the Insurance Act, as set out in Schedule 3, from 1 July 2018.

Consequently, the process of the conversion of registrations to licences will be managed in such a way that the regulation and supervision of the conduct of insurers is not undermined. Meaning that no new licences will be issued under the Insurance Act and no conversion of a registration can be finalised if the conduct-related legislative framework is not yet in place. The conversion process may therefore be concluded, but the actual licence certificate will only be issued once the Tranche 2 amendments to the Regulations and PPRs under the LTI Act and STI Act have been promulgated. However, this will not impact the conversion of registrations for reinsurers and licencing of branches of reinsurers.

#### **Continued engagement with insurers**

The PA will continue to issue communications to industry on matters relating to the implementation of the Insurance Act and related Prudential Standards, as and when a need arises.

Please note that all communication relating to the Insurance Act and Prudential Standards will be sent in the form of Insurance Act Communication, such as Insurance Act Communication 1 of 2018, which was issued on 11 April 2018. All other communication relating to processes and procedures as well as other administrative matters will be issued as PA Communique, such as this one.

Yours sincerely



**Kuben Naidoo**  
**Deputy Governor and CEO: Prudential Authority**

Date: 22 JUNE 2018