

Long-term and Short-term Insurance Acts, 1998

Joint Communication 1 of 2018

Status of instruments issued under the Long-term and Short-term Insurance Acts post 1 July 2018

Objective of this communication

This communication sets out the status of all instruments issued under the Long-term and Short-term Insurance Acts, 1998, from the effective date of these Acts up to 1 July 2018.

The instruments include Directives, Board Notices, Insurance Notices, Information Letters and Guidance Notes, but excludes Regulations and Policyholder Protection Rules made under these Acts, and Information Requests issued under these Acts.

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1. Application

This communication is relevant to all insurers registered or deemed to have been registered under the Long-term Insurance Act, 1998 (Act No. 52 of 1998) (LTI Act), the Short-term Insurance Act, 1998 (Act No. 53 of 1998) (STI Act), or both, as the case may be, including where the registration of insurers is subsequently converted to a license under the Insurance Act, 2017 (Act No. 18 of 2017) (Insurance Act) in accordance with item 6(2) of Schedule 3 of the Insurance Act, and persons licensed under the Insurance Act.

2. Purpose

This communication sets out the status of the following instruments issued under the LTI Act and the STI Act on and after the effective date of the Insurance Act:

- Directives;

- Board Notices;
- Insurance Notices;
- Information Letters; and
- Guidance Notes.

This communication does not relate to Regulations and Policyholder Protection Rules made under these Acts, and Information Requests issued under these Acts.

3. Background

The LTI Act and STI Act, pre 1 July 2018, provide for both the prudential and conduct of business legislative frameworks for insurers prior to effective date of the Insurance Act. Over the course of a number of years, various instruments were issued under the LTI Act and STI Act to facilitate the administration of the aforementioned Acts. These included Directives, Board Notices, Insurance Notices, Information Letters and Guidance Notes.

Post 1 July 2018, the Insurance Act provides for the prudential legislative framework for insurers. The commencement date of the Insurance Act is 1 July 2018. The Insurance Act repeals all prudential requirements currently provided for in the LTI Act and STI Act. The remaining sections of the LTI Act and STI Act will provide the conduct of business legal framework for insurers pending the enactment and implementation of the envisaged Conduct of Financial Institutions Act.

Post 1 July 2018, the Financial Sector Conduct Authority is the responsible authority for the LTI Act and STI Act and the Prudential Authority is the responsible authority for the Insurance Act.

This means that not all the instruments issued under the LTI Act and STI Act will remain in force or be relevant post 1 July 2018. This communication, in the Annexure, therefore sets out which of the instruments –

- remain in force;
- are withdrawn / lapse on the effective date of the Insurance Act; and
- are no longer relevant.

4. Application of instruments

Instruments that remain in force may contain references to –

- (a) sections in the LTI Act and STI Act which have been repealed by the Insurance Act;
- (b) other instruments that have been withdrawn / lapsed as indicated in the Annexure to this Notice (e.g. Directive 159.A.i); and
- (c) specific requirements in the Regulations and Policyholder Protection Rules under the LTI Act and STI Act that have been removed or replaced by a new or similar requirement through the Tranche 1 and/or 2 amendments to the Regulations and Policyholder Protection Rules under the LTI Act and STI Act.

A reference referred to in paragraphs (a) and (b) above as well as a reference to a specific requirement that has been removed, as referred to in paragraph (c), and which has not been replaced by a similar requirement, must be interpreted as being obsolete.

A reference to a specific requirement that has been replaced by a new or similar requirement as referred to in paragraph (c) must be interpreted as a reference to the new or similar requirement.

5. Annexure

The status of instruments issued under the LTI Act and the STI Act on the effective date of the Insurance Act is set out in the Annexure.

1. Directives

1.1. The following Directives under the LTI Act and STI Act remain in force:¹

55.A.i (LT,ST&LL)	Placement of insurance outside the Republic
119.A.i (LT)	Section 54: Limitations on provisions of certain long-term policies
135 1/2001*	Legal and administrative requirements for the substitution of certain compulsory annuity policies: section 37(2) read with section 3(2)(a) of the Long-term Insurance Act, 1998
135A*	Long-term Insurance Act, 1998: section 37(2) - transferability of compulsory linked annuity policies
149.A.v (ST&LL)	Placement of Short-term Insurance Business with Entities not registered in South Africa to Conduct Insurance Business
151.A.i (ST)*	Reporting requirements prior to termination of binder agreements and related unilateral cancellation of short-term insurance policies
157.A.i (LT)*	Guidance on guaranteed and partially guaranteed policy benefits for purposes of regulation 28(8)(b)(iii) of the Regulations made under section 36 of the Pension Funds Act No. 24 of 1956

*The Directive remains in force and will be reassessed during 2018.

1.2. The following Directives under the LTI Act and STI Act are withdrawn / lapse on the date stipulated in the last column:

Directive		Date Withdrawn / Lapsed
1 (RAF)	Application of the Short-term Insurance Act No. 53 of 1998 to the Road Accident Fund and matters related to the implementation of certain provisions of the Financial Supervision of the Road Accident Fund Act	1 July 2018
1.A.i (LT&ST)	Standing approval to directly borrow money in terms of section 34(1)(c) of the Long-term	1 July 2018

¹ Paragraph 4 of the Joint Communication applies where the directive contains incorrect referencing or contains a provision for which there is no corresponding provision in the Insurance Act.

	Insurance Act or section 33(1)(c) of the Short-term Insurance Act	
53.A.i (LT)	Approval of appointment of statutory actuary / statutory actuaries as directors of long-term insurance companies	1 July 2018
97.A.ii (ST)	Motor vehicle warranty and extended motor vehicle warranty cover	1 July 2018
101.A.i (LT&ST)	Directors and managing executive	1 July 2018
106.A.i (LT&ST)	Increase of a percentage of the investment limits	1 July 2018
112.A.i (LT)	Credit insurance schemes	1 July 2018
112.B.i (ST&LL)	Credit insurance schemes	1 July 2018
126.A.i (LT&ST)	Policy regarding assets held on behalf of registered insurers in terms of section 34(1)(b) of the Long-term Insurance Act and section 33(1)(b) of the Short-term Insurance Act	1 July 2018
127.A.i (LT)	Cross border business	1 July 2018
127.B.i (LT)	Insurance business carried on by an off-shore branch of a locally registered insurer	1 July 2018
132.A.ii (LT)	Interpretation of section 49 of the Long-term Insurance Act, 1998	1 July 2018
138.A.i (LT&ST)	Public officer / management of compliance risk	1 July 2018
140.A.ii (LT)	Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirements ("requirements") of long-term insurers	1 July 2018
140.B.iii (LT)	Application of SA GAAP AC133 to the requirements - differences between the annual financial statements and the long-term insurance return	1 July 2018
141.A.i (LT)	Investment in shares of the insurer's holding company - long-term insurers	1 July 2018
141.B.i (ST)	Investment in shares of the insurer's holding company - short-term insurers	1 July 2018
142.A.i (ST)	Calculation of the value of certain kinds of assets of short-term insurers	1 July 2018
143.A.i (LT)	Investment portfolios where alternative investment strategies/hedge fund strategies are employed	1 July 2018
144.A.i (LT&ST)	Presentation of financial statements in accordance with generally accepted accounting practice	1 July 2018
145.A.i (LT)	Disregarding amounts representing negative liabilities in respect of long-term policies when calculating the value of	1 July 2018

	assets according to paragraph 4(iv) of schedule 3 to the Long-term Insurance Act, 1998	
146.A.i (LT)	The Application of Linked Policies as Defined in the Long-term Insurance Act, Act 52 of 1998	1 July 2018
147.A.i (LT)	Governance of Discretionary Participation Products (DPP) & Principles and Practices of Financial Management (PPFM)	1 July 2018
148.A.i (LT)	FIC Compliance and Reporting of Information	1 July 2018
153.A.ii (LT)	Maximum causal event charges that may be deducted under Part 5 (Requirements and limitations regarding the values and benefits of policies) of the Regulations issued under the Long-term Insurance Act	Withdrawn on the effective date of the amendments to the Regulations where that date is after 1 July 2018, otherwise 1 July 2018
154.A.iii (LT&ST)	Guidance on Securities Lending Transactions	1 July 2018
156.A.i (ST)	Compliance with Section 45 of the Short-term Insurance Act No. 53 of 1998, read with Regulations 4.1 to 4.3 of the Regulations issued under section 70 of the Act	1 July 2018
159.A.i (LT&ST)	Compliance with sections 9(3)(b)(i) read with sections 12(1)(c) of the Long-term Insurance Act and Short-term Insurance Act, respectively: Outsourcing	1 July 2018
LT Tax	Calculation of the value of liabilities according to section 29A of the Income Tax Act, 1962	1 July 2018

1.3. The following Directives under the LTI Act and STI Act are no longer relevant:

134.A.ii (LT&ST)	Personal account trading - FSB position paper guidelines
139.A.i (LT)	Amendments to the Long-term insurance Act, 1998
139.B.i (ST)	Amendments to the Short-term insurance Act, 1998

2. Notices under the LTI Act

2.1. The following Notices under the LTI Act remain in force:

No.63, GG29911 25 May 2007*	Requirements imposed by the Financial Services Board for nominees to operate in South Africa
No. 101, GG30392 26 October 2007	Prescribing of Transnet Pension Funds as "Funds" for purposes of the Long-term Insurance Act, 1998
No.LT7, FSCA Web site 15 December 2016	Conduct of Business Return to Registrar
No.LT3, FSCA Web site 21 April 2017	Conduct of Business Return to Registrar
No.26, GG41459 23 February 2018	Penalty for failure to furnish Registrar with returns etc.
No.LT1, FSCA Web site 09 March 2018	Prescribed insurance fees

*The Notice remains in force and will be reassessed during 2018.

- 2.2. The following Board Notices under the LTI Act are withdrawn / lapse on the effective date of the Insurance Act:

No.186, GG19609 24 December 1998	Certificate of registration
No.1343 GG22907 14 December 2001	Procedure for the imposition of penalties
No.95, GG30316 28 September 2007	Documents which a person may inspect or obtain a copy of or an extract from in terms of section 3(4) of the Long-term Insurance Act, 1998
No.457, GG30987 25 April 2008	Determination of an increased maximum amount of benefit to be provided by a "friendly society", as envisaged in section 7(2)(b) of the Long-term Insurance Act, 1998
No.14, GG32916 05 February 2010	Prescribed requirements for the calculation of the value of the assets, liabilities and capital adequacy requirement of long-term insurers
No.188, GG34767 25 November 2011	Internal Model Application Process: Pre-application assessment fees
No.868, GG37022 11 November 2013	Determination of the maximum amount contemplated in the definition of "assistance policy"
No.158, GG38357 19 December 2014	Governance and Risk Management Framework for Insurers
No.158, GG38357 14 August 2015	Fit and proper requirements

- 2.3. The following Notices under the LTI Act are no longer relevant:

No.192, GG40507 15 December 2016	Proposed Replacement of Policyholder Protection Rules
No.153, GG40507	Proposed Replacement of Policyholder protection Rules

01 September 2017	
No.181, GG41237 10 November 2017	Draft determination on "Equivalence of Reward"
No.30, GG41473 02 March 2018	Proposed Amendments to Policyholder Protection Rules
Notices on the termination of registration of an insurer under section 13(3) of the Long-term Insurance Act*	
Notices on Returns to Registrar under section 36(1) of the Long-term Insurance Act other than the Notices on Returns to Registrar listed in the table under 2.1*	

*The Notices are not individually listed in the table.

3. Notices under the STI Act

3.1. The following Notices under the STI Act remain in force:

No.63, GG29911 25 May 2007*	Requirements imposed by the Financial Services Board for nominees to operate in South Africa
No.ST7, FSCA Web site 15 December 2016	Conduct of Business Return to Registrar
No.ST3, FSCA Web site 21 April 2017	Conduct of Business Return to Registrar
No.25, GG41456 23 February 2018	Penalty for failure to furnish Registrar with returns etc.
No.ST2, FSCA Web site 09 March 2018	Prescribed insurance fees

*The Notice remains in force and will be reassessed during 2018.

3.2. The following Notices under the STI Act are withdrawn / lapse on the date stipulated in the last column:

Notice		Date Withdrawn / Lapsed
No.189, GG19610 24 December 1998	Certificate of registration	1 July 2018
No.192, GG19610 24 December 1998	Form of guarantee	1 July 2018
No.194, GG19610 24 December 1998	Irrevocable guarantee	1 July 2018
No.1342, GG22907 14 December 2001	Procedure for the imposition of penalties	1 July 2018

No.59, GG29894 25 May 2007	Returns by Lloyd's to Registrar	1 January 2020
No.94, GG30316 28 September 2007	Documents which a person may inspect or obtain a copy of or an extract from in terms of section 3(4) of the Short-term Insurance Act, 1998	1 July 2018
No.458, GG30987 25 April 2008	Determination of an increased maximum amount of benefit to be provided by a "friendly society", as envisaged in section 7(2)(b) of the Short-term Insurance Act, 1998	1 July 2018
No.30, GG30987 25 April 2008	Return by independent intermediary	Withdrawn on the effective date of the amendments to the Regulations where that date is after 1 July 2018, otherwise 1 July 2018
No.28, GG32993 01 March 2010	Prescribed requirements for the minimum amount of the security to be provided by or on behalf of a Lloyd's underwriter	1 January 2020
No.169, GG34715 28 October 2011	Prescribed requirements for the calculation of the value of assets, liabilities and capital adequacy requirement of short-term insurers	1 July 2018
No.188, GG34767 25 November 2011	Internal Model Application Process: Pre-application assessment fees	1 July 2018
No.158, GG38357 19 December 2014	Governance and Risk Management Framework for Insurers	1 July 2018
No.158, GG39095 14 August 2015	Fit and proper requirements	1 July 2018

3.3. The following Notices under the STI Act are no longer relevant:

No.192, GG40507 15 December 2016	Proposed Replacement of Policyholder Protection Rules
No.153, GG40507 01 September 2017	Proposed Replacement of Policyholder protection Rules
No.30, GG41473 02 March 2018	Proposed Amendments to Policyholder Protection Rules
Notices on the termination of registration of an insurer under section 13(3) of the Short-term Insurance Act*	

<p>Notices on Returns to Registrar under section 35(1) of the Short-term Insurance Act other than the Notices on Returns to Registrar listed in the tables under 3.1 and 3.2*</p>

*The Notices are not individually listed in the table.

4. Information Letters under the LTI Act and STI Act

4.1. The following Information Letters under the LTI Act and STI Act remain in force:

3/2008 (LT&ST) 28 Jul 2008	Prohibition on inducements - Declaratory judgment
1/2012 (ST) 18 May 2012*	Requirements of the Short-term Insurance Act No. 53 of 1998 in respect of insurance offered by persons acting in the capacity of a bailee (such as couriers and transporters)
3/2013 (LT&ST&LL) 01 Jul 2013*	Binder regulations: guidance on activities that constitute binder functions, activities that are incidental to binder functions and remuneration payable as a binder fee
3/2014 (LT&ST) 17 Oct 2014	Key Findings: Complaints Management Thematic Review

*The Information Letter remains in force and will be reassessed during 2018.

4.2. The following Information Letters under the LTI Act and STI Act are either withdrawn or no longer relevant on the effective date of the Insurance Act:

1/2004 (LT,ST&LL) 30 Jan 2004	Electronic communication
2/2004 (LT,ST&LL) 30 Jan 2004	Directives
3/2004 (LT,ST&LL) 30 Jan 2004	Information letters
4/2004 (LT) 26 Mar 2004*	Long-term tax directive: calculation of the value of liabilities according to section 29A of the Income Tax Act, 1962
5/2004 (ST) 29 Apr 2004	Directive 142.A.i (ST) - calculation of the value of certain kinds of assets of short-term insurers
6/2004 (LT,ST&LL) 31 Aug 2004	Prescribed long-term and short-term insurance fees
2/2006 (LT&ST) 20 Dec 2006	Service level commitments by the Registrars of Long-term and Short-term insurance
3/2006 (LT) 21 Dec 2006	Requirements for minimum values where contractual changes are made to savings policies
2/2007 (LT) 26 Mar 2007	Amendments to Part 3 of the Regulations under the Long-term Insurance Act; Special provisions concerning commission on replacement policies

1/2008 (LT) 07 May 2008	Notices issued under the Long-term Insurance Act
2/2008 (ST) 07 May 2008	Notices issued under the Short-term Insurance Act; and amendment of Part 4 of the Regulations under the Short-term Insurance Act
4/2008 (LT) 12 Sep 2008	Amendments to Part 3 and Part 5 of the Regulations under the Long-term Insurance Act, 1998
5/2008 (ST) 02 Dec 2008	Notice to brokers and policyholders regarding insurance business placed with insurers through Silvex 272 cc trading as Niche Administrators
2/2009 (ST) 25 Mar 2009	Notice to brokers and policyholders regarding insurance business placed with insurers through Silvex 272 cc trading as Niche Administrators
8/2009 (LT&ST) 04 Dec 2009	Solvency Assessment and Management regime
2/2010 (ST) 01 May 2010	Appointment of statutory actuaries by short-term insurers
2/2011 (LT&ST) 20 Oct 2011	Legislative and other developments affecting third party cell captive arrangements
6/2011 (LT&ST) 24 Oct 2011	Restructuring of the Insurance division of the Financial Services Board with effect from 1 October 2011
3/2012 (LT&ST) 19 Jul 2012	Market practices relating to the payment of fees
4/2012 (LT&ST) 09 Jul 2012	General approval for the amendment of certain provisions in the Memorandum of Incorporation (previously known as the Memorandum and Articles of Association) of insurers
6/2012 (LT&ST) 20 Dec 2012	Service level commitments by the Registrar of Long-term and Short-term insurance
7/2012 (LT&ST) 30 Nov 2012	Implementation of directive 159.A.i (LT&ST) relating to outsourcing: extension of date, clarification of notification requirements and amendments to the notification form to be submitted
8/2012 (LT&ST) 04 Dec 2012	Binder regulations: guidance and supervisory approach
1/2013 (LT) 04 Feb 2013	Treatment of deferred tax liabilities relating to goodwill (intangible assets) that arise from the transfer of a portfolio of insurance policies referred to as “present value of in-force business” and negative rand reserves for statutory reporting purposes
4/2013 (LT&ST) 10 May 2013	Clarification on the application of section 11(3)(b) of the Companies Act No. 71 of 2008 to registered insurers

6/2013 (LT&ST&LL) 10 Sep 2013	Binder Regulations: System changes required to comply with Regulation 6.3 of the Binder Regulations
8/2013 (LT&ST) 11 Oct 2013	Closing date for applications under the Long- and Short-term Insurance Acts requiring consideration and approval by 31 December 2013
9/2013 (LT) 15 Nov 2013	Increase in the amount contemplated in the definition of "assistance policy" in section 1(1) of the Long-term Insurance Act No. 52 of 1998
4/2014 (LT&ST) 10 Nov 2014	Amendments to the Income Tax Act No. 58 of 1962: Effect on "Income Protection Policies" issued under the Long-term Insurance Act No. 52 of 1998 and Short-term Insurance Act No. 53 of 1998
2/2014 (LT) 29 Aug 2014**	Conducting of insurance business in respect of assistance and life policies through co-administration agreements (also referred to as profit sharing or 80/20 agreements)
2/2015 (LT&ST) 18 Mar 2015	Notice on the Governance and Risk Management Framework for Insurers, 2014: Exemptions
5/2015 (LT&ST) 15 December 2015	Binder Regulations Thematic Review: Key Findings Report
2/2016 (LT&ST) 22 February 2016	Clarification of the type of consumer credit insurance products in respect of which information must be provided and extension of deadline for submission of the information
4/2016 (LT&ST) 12 September 2016	Standing approval under section 24 of the Long-term Insurance Act No. 52 of 1998 and section 23 of the Short-term Insurance Act No. 53 of 1998 for the issuance of shares by or a change in capital structure of cell captive insurers
5/2016 (LT&ST) 12 September 2016	Request for information on new and existing third party cell captive arrangements

*The Information Letter is withdrawn in respect of any tax assessment period that ends after 1 July 2018.

**The Information Letter is withdrawn on the effective date of the amendments to the Regulations where that date is after 1 July 2018, otherwise 1 July 2018.

5. Guidance under the LTI Act and STI Act

5.1. The following Guidance Note under the LTI Act and STI Act remains in force:

Guidance	Insurance Conduct of Business Returns: Guidance Note
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5.2. The following Guidance Notes under the LTI Act and STI Act are withdrawn / lapse on the effective date of the Insurance Act:

Guidance Note	Guidelines for registration as a long-term or short-term insurer in terms of section 9(1) of the Long-term Insurance Act or the Short-term Insurance Act, including Guidance for the completion of the five-year business plan projections for long-term and short-term insurers
Guidance Note	Guidance for variation of conditions of registration as a long-term or short-term insurer in terms of section 11(1)(a) of the Long-term Insurance Act or the Short-term Insurance Act
Guidance Note	Guideline for an arrangement for the transfer of long-term or short-term insurance business where policyholders have been or will be made aware of the nature of the substitution of their liabilities and have signified their consent thereto in writing
Guidance Note	Guidelines for the transfer of the business of a long-term or short-term insurer in terms of section 38 of the Long-term Insurance Act or section 37 of the Short-term Insurance Act