



FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA
LONG-TERM INSURANCE ACT, 1998 (ACT 52 OF 1998)

Addressee:	Long-term insurers, administrators and schemes		File:	10.11.2.2.4, 10.11.2.2.5 & 10.41.1.5.2	
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3 rd	-	-	-	-	-
Subject:	Compliance with the Long-term Insurance Act No. 52 of 1998 and Part VII of the Policyholder Protection Rules, 2004, issued under section 62 of that Act – Assistance business group schemes				

1. PURPOSE

The purpose of this Directive is to, under section 4(4) of the Long-term Insurance Act No. 52 of 1998 ("the Act"), provide clarity on the interpretation of the Act and Part VII of the Policyholder Protection Rules, 2004, issued under section 62 of the Act ("the PPRs"), thereby ensuring the consistent and uniform application thereof by long-term insurers, administrators and schemes.

2. APPLICATION AND SCOPE OF DIRECTIVE

- 2.1 This Directive applies to all long-term insurers ("insurers"), administrators and schemes. Insurers must bring this Directive to the attention of any administrators and schemes with whom they conduct business or will conduct business.
- 2.2 Insurers must take reasonable steps to ensure that it, administrators and schemes comply with the Act and the PPRs.
- 2.3 This Directive focuses on certain sections of the Act addressing assistance business policies and Part VII of the PPRs. The Directive does not address general responsibilities of insurers, administrators and schemes under the Act (including the PPRs and any subordinate legislation, enactment or measure made under the Act). These responsibilities must be complied with despite the fact that these are not specifically dealt with in this Directive.

3. BACKGROUND

From the significant number of complaints relating to assistance business group schemes received by the Registrar of Long-term Insurance, it is apparent that -

- 3.1 the Act and Part VII of the PPRs are not consistently and uniformly interpreted and applied in the long-term insurance industry; and
- 3.2 certain insurers, administrators and schemes are not complying with the Act and Part VII of the PPRs.

4. THE LEGISLATIVE FRAMEWORK¹

- 4.1 To ensure that the Act and Part VII of the PPRs are interpreted and applied consistently and uniformly by insurers, administrators and schemes, and that what constitute compliance therewith is clearly understood, Part VII and the related sections of the Act are summarised and explained, where necessary.
- 4.2 In this regard, it is important that insurers, administrators and schemes at all times take into account the *objective of the PPRs*, which is to ensure that policies (that includes assistance policies) are entered into, executed and enforced in accordance with sound insurance principles and practices in the interest of the protection of policyholders.

What is an “assistance business group scheme”?

- 4.3 Policyholder Protection Rule (“PPR”) 8.1 defines an “assistance business group scheme” and “scheme” as the provision of policy benefits under an assistance policy to a group where -
 - 4.3.1 individual persons are the policyholders;
 - 4.3.2 no individual underwriting takes place;
 - 4.3.3 the individual person whose life is insured, is directly or indirectly paying premiums;
 - 4.3.4 the policy may be cancelled by either party to the policy; and
 - 4.3.5 the policy has term cover only.
- 4.4 Section 1 of the Act defines an “assistance policy” as a life policy in respect of which the aggregate of –

¹ Any word or expression referred to in this Directive to which a meaning has been assigned in the Act has that meaning.

- 4.4.1 the value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the insurer); and
- 4.4.2 the amount of the premium in return for which an annuity is to be provided, does not exceed R10 000, or another maximum amount prescribed by the Minister²; and includes a reinsurance policy in respect of such a policy.
- 4.5 PPR 8.1 also defines a “group” as two or more people who have entered, on a group-underwriting basis, into a policy with an insurer through an administrator who has been provided with a mandate by the insurer to facilitate these policies.
- 4.6 This means that –
- 4.6.1 an assistance business group scheme is an assistance policy that is underwritten on a group basis;
- 4.6.2 despite the fact that the policy is underwritten on a group basis, each member of the group is an individual policyholder;
- 4.6.3 a direct relationship therefore exists between the member / policyholder and the insurer, and that the contract of insurance is between the member / policyholder and the insurer; and
- 4.6.4 an assistance business group scheme can only be entered into through an administrator mandated by an insurer to facilitate these assistance policies.
- 4.7 This also means that the following practice is unlawful: The issuing of an assistance business group scheme with the administrator of the scheme being the policyholder and claiming that –
- 4.7.1 the administrator as the policyholder is not subject to the Financial Advisory and Intermediary Services Act No. 37 of 2002 (“FAIS Act”), despite the PPRs defining an “administrator” as a person who, amongst others, is a financial services provider or representative as contemplated in the FAIS Act (see paragraphs 4.12 to 4.17 below); and
- 4.7.2 disclosure requirements (specifically in respect of premium, costs, fees, policy benefits, limitations and exclusions) prescribed under the Act and the FAIS Act are met if such disclosures are made to the administrator only.

How must policy benefits be provided?

² The Minister of Finance, acting under section 1(1) of the Act, determined the maximum amount contemplated in that definition as R 18 000 with effect from 1 April 2008 in Government Gazette 30987, Government Notice 459 of 25 April 2008.

- 4.8 Section 53 of the Act provides that a policy benefit under an assistance policy that is expressed otherwise than as a sum of money **must** be provided as a sum of money if the policyholder so demands, in which case the sum of money must be equal in value to the cost the long-term insurer would have incurred had the policy benefit been provided otherwise than as a sum of money.
- 4.9 The value of the policy benefits, other than an annuity, to be provided (not taking into account any bonuses to be determined in the discretion of the insurer) and the amount of the premium in return for which an annuity is to be provided, may not exceed R18 000³.

When may an insurer conduct business with an assistance business group scheme or an administrator?

- 4.10 PPR 9 provides that an insurer may only conduct business with an assistance business group scheme or an administrator if the insurer has entered into a written agreement⁴ with such a scheme or administrator. A policy involved will not be void merely due to any such agreement not having been entered into.
- 4.11 This means that –
- 4.11.1 an insurer must enter into an agreement with an administrator or a scheme;
- 4.11.2 if an insurer fails to enter into a written agreement as contemplated in PPR 9, the insurer is still on risk / liable for any policy benefits that is payable under the policies.

What is an administrator and what are the requirements that apply to an administrator?

- 4.12 PPR 8.1 defines an “administrator” as a person who has a written mandate from an insurer to do administrative work in respect of a specific assistance business group scheme and who is licensed as a financial services provider or a representative as contemplated in the FAIS Act.
- 4.13 PPR 8.1 defines “administrative work” as work in connection with the handling of enquiries, maintaining administrative records, the receipt of premiums and processing of claims to the extent agreed to in terms of a written mandate between the insurer and the administrator under an assistance business group scheme.
- 4.14 This means that –

³ See footnote 2.

⁴ This agreement is separate and in addition to the policy.

- 4.14.1 an administrator must have a written mandate from an insurer to do administrative work in respect of a specific assistance business group scheme;
- 4.14.2 an administrator must be licensed as a financial services provider or a representative as contemplated in the FAIS Act (also see paragraph 4.7 above). Where an administrator's licence becomes inoperable for whatever reason the written mandate of the administrator must be cancelled.
- 4.15 If an insurer enters into an agreement with an administrator that is different or separate from an assistance business group scheme, the administrator must have a written mandate from the insurer in addition to the written agreement contemplated in PPR 9 and, as stated in paragraph 4.12 above, be licensed as a financial services provider or representative as contemplated in the FAIS Act (also see paragraph 4.7 above).
- 4.16 If an insurer enters into an agreement with a scheme directly and the scheme will perform administrative work in respect of the assistance business group scheme, the scheme must have a written mandate from the insurer in addition to the written agreement contemplated in PPR 9 and, as stated in paragraph 4.12 above, be licensed as a financial services provider or representative as contemplated in the FAIS Act (also see paragraph 4.7 above).
- 4.17 If an insurer enters into an agreement with a scheme directly and neither the scheme nor an administrator that is different or separate from the scheme will perform any administrative work in respect of the assistance business group scheme, the insurer must perform the administrative work itself.

What must be included in an agreement contemplated in PPR 9?

- 4.18 PPR 10 provides that an agreement entered into as required by PPR 9 must contain at least the following clauses:
- 4.18.1 the premium rates to be charged by the insurer inclusive of commission payable by the insurer to an intermediary⁵ involved;
- 4.18.2 any fees to be added by any other party⁶;
- 4.18.3 if premiums are to be received by any person other than the insurer, the agreement must contain at least the following:
- the period within which such premiums will be paid over to the insurer;

⁵ Commission is inclusive of any amount paid to the administrator for administrative work.

⁶ Such fees must be reasonable and commensurate with actual services provided and not result in any service in respect of which commission or a binder fee is payable being remunerated again.

- that the insurer has the authority to at any time audit the books of the person receiving the premium; and
- that the premium moneys so received be handled as trust money⁷;

4.18.4 the scheme or administrator must provide the insurer with at least the following details:

- the names of policyholders and beneficiaries; and
- the identity numbers of policyholders.

4.19 If the scheme or administrator has the authority to pay claims, setting out the scope of the scheme's or administrator's powers to do so and the circumstances under which it may be done.

When can an agreement between an insurer and an assistance business group scheme or an administrator be cancelled?

4.20 PPR 11 provides that an agreement between an insurer and a scheme or administrator can only be cancelled if –

4.20.1 the new insurer who takes over the assistance business group scheme ("new insurer") has issued a written confirmation to the previous insurer ("old insurer") confirming that the new insurer will be the underwriter to the scheme; or

4.20.2 if the old insurer complies with the requirements as set out in PPR 13.

4.21 PPR 13 provides that an old insurer that has received confirmation from the assistance business group scheme or administrator that it so wishes to move policies to a new insurer, the old insurer must provide the following information to the new insurer as soon as possible but not longer than 30 days after receipt of the confirmation by the scheme or administrator:

4.21.1 the names of policyholders and beneficiaries and identity numbers of policyholders;

4.21.2 the number of policyholders on the scheme by type and amount of cover;

4.21.3 the aggregate amount of premium;

4.21.4 the claims history of the scheme (for the past three years if available);

4.21.5 a copy of the master policy;

⁷ This means that the premiums must be paid into a separate bank account.

- 4.21.6 other information required by the new insurer.
- 4.22 In addition to PPR 11 read with PPR 13, PPR 15 provides that the cancellation of an agreement will only be effective if –
- 4.22.1 the Registrar of Long-term Insurance has beforehand been informed of the cancellation; and
- 4.22.2 all individual policyholders have to the satisfaction of the registrar been notified of such cancellation.
- 4.23 PPR 11 provides that the cancellation of an agreement in a manner that does not comply with PPR 11 (read with PPRs 13 and 15) is void.
- 4.24 This means that –
- 4.24.1 the old insurer will remain on risk for any policy benefits that are payable under the policies, if the agreement is not terminated in accordance with PPR 11 read with PPRs 13 and 15; and
- 4.24.2 a scheme or administrator cannot unilaterally cancel or move an assistance business group scheme unless another insurer has agreed to underwrite the scheme.

What must a new insurer do after the inception of the policies under the assistance business group scheme or administrator?

- 4.25 PPR 12 provides that a new insurer that underwrites an assistance business group scheme may not –
- 4.25.1 impose any new waiting periods. If the new insurer imposes new within periods, those periods are void;
- 4.25.2 unilaterally change any terms and conditions, other than the premiums payable. If the new insurer changes any terms and conditions, those terms and conditions are void. PPR 12 provides that terms and conditions may only be changed by the new insurer with the consent of each individual policyholder.
- 4.26 PPR 14 provides that a new insurer must within 30 days after the inception of the assistance policies under the scheme or administrator comply with any disclosure or other requirements binding on the insurer by virtue of the Act, the PPRs, the FAIS Act or any other law. An example of such disclosure requirements is found in section 48 of the Act.

5. PRACTICES TO DESIST FROM AND ACTIONS TO BE TAKEN

- 5.1 Insurers, administrators and schemes are directed to immediately comply with Part VII of the PPRs by desisting from certain practices and / or taking certain actions not informed by this Directive.
- 5.2 An insurer, administrator or scheme that is unable to immediately comply with this Directive must, –
- 5.2.1 within 30 days from the effective date of this Directive, inform the Registrar accordingly; and
- 5.2.2 within 15 days from the date of informing the Registrar, submit an action plan to the Registrar, which action plan must set out how and by when the insurer, administrator or scheme will comply with Part VII of the PPRs.
- 5.3 An insurer, administrator or scheme that complies with this Directive on the effective date thereof must, within 30 days from the date of issuing of this Directive, inform the Registrar accordingly.
- 5.4 The notifications and action plan referred to in paragraphs 5.2 and 5.3 must be submitted electronically to the Registrar, c/o koko.monama@fsb.co.za.

6. NON-COMPLIANCE

Enforcement Committee

- 6.1 A contravention of the Act (including the PPRs and any subordinate legislation, enactment or measure made under the Act) may be referred to the Enforcement Committee in accordance with the section 6 of the Financial Institutions (Protection of Funds) Act No. 28 of 2001.

Offences

- 6.2 Failure to comply with the PPRs constitutes an offence, which on conviction may result in a penalty referred to –
- 6.2.1 in respect of insurers, under section 67(1)(c) of the Act; and
- 6.2.2 in respect of intermediaries, under section 66(1)(c) of the Act.

7. AVAILABILITY AND INFORMATION SHARING

This Directive is available on the website (www.fsb.co.za) of the Financial Services Board.

REGISTRAR OF LONG-TERM INSURANCE

Draft for comment