national treasury
Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

FSB

Annexure A

DRAFT INSURANCE LAWS AMENDMENT BILL, 2013

Response to public comments

April 2014

LIST OF COMMENTATORS	
1	AIG South Africa Limited
2	Alexander Forbes Life
3	Association for Savings and Investment South Africa (“ASISA”)
4	Banking Association of South Africa (“BASA”)
5	Ernst & Young Incorporated
6	Independent Regulatory Board for Auditors (“IRBA”)
7	eThekwini Municipality
8	Lion of Africa Insurance Company Limited
9	Mike Ilsley Independent
10	Oasis Crescent Insurance Ltd
11	Professional Provident Society (“PPS”)
12	PricewaterhouseCoopers (“PwC”)
13	Real People Assurance Company Limited
14	Regent Insurance Company Limited
15	RMB Structured Insurance
16	South African Insurance Association (“SAIA”)

	NAME	SECTION[1]	COMMENT	RESPONSE
1.	ASISA	General	**Proportionality and consultation:** The proposed insertion of section 4(18) in the Act recognises that the FSB in performing its functions must have regard to the objects of the Act, international and regulatory and supervisory standards and the principle that requirements imposed on persons regulated under the Act and the exercise of supervisory powers should be proportionate to the purpose for which it is intended. This statement in the Act is welcomed. An inclusion of references to our Constitution and/or the Promotion of Administrative Justice Act (even though not specifically necessary) will also be welcomed. In doing so, it will be transparent to the persons subject to the Act that the Registrar is obliged to ensure that the administrative action it exercises is lawful, reasonable and procedurally fair especially given that the Bill seeks to extend the Registrar's authority to remove appointees beyond directors, public officers, auditors and statutory actuaries. Our comments in respect of proper consultation as set out in respect of the Financial Services Laws General Amendment Bill also have application as regards this Bill. The Insurance Laws Amendment Bill introduces many provisions authorising the Registrar to issue sub-ordinate legislation in order to prescribe certain matters. It remains of utmost importance that these matters are properly consulted with the regulated entities. In the absence thereof, the outcome may not be proportionate. Where matters are to be prescribed, ASISA members wish to highlight the constitutional requirements and utmost importance of a proper consultative process, appropriate transitional arrangements and also the careful consideration of vested rights. The Bill introduces outcomes based provisions which poses challenges both to the regulator and regulated entities. Consultation will therefore become more important than ever before.	Noted. The Constitution is the supreme law of the country. PAJA applies to any administrative action unless same is exempted under section 2 of PAJA. The actions of the Registrars of Long- and Short-term Insurance are not exempted under section 2 of PAJA. Section 3(2) of PAJA therefore applies. Although a reference to the Constitution and PAJA in the Insurance Laws may be of assistance to persons reading the legislation, such would have wider implications for the Long- and Short-term Insurance Acts and the Acts administered by the FSB as this would imply that all Acts would have to reference the Constitution and PAJA. As to consultation, the Registrar is committed to meaningful consultation as is evident from consultation processes to date. Further, the FSLGAB has been amended to provide for the Minister of Finance to prescribe a Code of Consultation for the FSB that would also apply in respect of the Insurance Laws.
2.	ASISA	General	**Solvency Assessment and Management (SAM) Project:** The Explanatory Memorandum indicates that the Bill introduces interim measures relating to governance, risk management and internal	Noted. Care has been taken to ensure that the ILAB is aligned with the final measures under SAM. The SAM final measures may impose

[1] Refers to the sections of the LTIA and STIA respectively; not that of the amendment Bill.

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			controls of insurers pending the finalisation of the broader review of the Insurance Laws and the SAM Project. It appears as if some of the work being done as part of the SAM Project is diverging from the proposed amendments in the Bill. This may be fact or perception, but it contributes to confusion and concerns over cost pressures if this Bill requires measures to be put in place which may have to be amended again when the SAM project is finalised, for example additional capital requirements in respect of certain risks which have not been specified and the group supervisory framework.	stricter requirements than that provided for in the ILAB. ILAB is an interim step towards SAM final measures. Amendments have been proposed to certain provisions of the ILAB to allow for more flexibility and to better provide for proportionality. See responses below. In respect of additional capital requirements or a capital add-on, details are provided for in Discussion Document 92. The group supervisory framework is referred to in Discussion Document 1. Further detail of the group supervisory framework will be dealt with in the subordinate legislation and the group reporting requirements. In respect of the interim group reporting requirements, the proposals have been tested within the Insurance Groups Task Group under the SAM Structures.
3.	ASISA	General	**Requirements in addition to the Companies Act:** It is National Treasury's stated intention that financial institutions must be held to a higher standard. It is assumed that this is the reason for the introduction of governance requirements over above those that exist in the Companies Act. The provisions of the Companies Act should only be amplified where necessary to adhere to the objects of the Act. ASISA members would appreciate more details as to the reasoning in respect of the additional requirements and how these translate to a higher standard and increased consumer protection. The impact of implementing additional requirements from a cost perspective should not be underestimated. The increased costs should be proportionate to the benefits resulting from the additional requirements.	Noted. The Insurance Acts have since their enactment in 1998 amplified the framework provided by the Companies Act. Certain requirements have also been improved to align better with international standards. Governance requirements have been added with the explicit intention of strengthening policyholder protection – in particular, ensuring that shareholder interests are sufficiently balanced by an explicit consideration of policyholder interests. Amendments have been proposed to certain provisions of the ILAB to allow for more flexibility and to better provide for proportionality. See responses below.
4.	ASISA	General	**Group supervision:** The introduction of provisions in respect of insurance groups is causing uncertainty as to the application thereof. It is difficult for regulated entities to fully assess the impact	Noted.

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			of the new requirements in the absence of detailed indications or explanations of intended outcomes. There is a particular concern from the perspective of linked insurers and how the proposed provisions will affect other businesses that form part of the group.	
5.	ASISA	General	**Non-payment of premiums:** ASISA members do not agree with the proposed amendment of section 52(1) of the Long-term Insurance Act and the proposed repeal of subsections 52(2) and (3) of the Act. The 7 day notice period is unrealistic and impractical. The replacement of the existing subsection (2) with an authority to the Registrar to prescribe the manner in which overdue premiums are to be dealt with may impinge upon vested rights, established practice, processes, procedures and existing contractual rights. The proposed amendment was not motivated or explained in detail and it is thus not possible to determine what mischief is intended to be addressed or to propose alternative measures to address those. Further detailed comments are included in the table.	Noted. The 7 day period provided in the amendment will be reconsidered.  A recent review by the Registrar has revealed that the current provision is not consistently understood and applied, and does not always adequately protect policyholders. The requirements for dealing with non-payment of premiums are policyholder protection issues that are best included in the Policyholder Protection Rules (PPRs). The Bill provides for the Registrar to prescribe measures to achieve adequate policyholder protection. There will be appropriate consultation and transitional measures on these rules.
6.	ASISA	General	**Removal of appointees:** The removal of the right to an internal appeal to the FSB Appeal Board from section 22 of the Act may create uncertainty. Even though the right to the appeal to the FSB Appeal Board remains in section 26 of the Financial Services Board Act, the removal from section 22 may create the impression that such right no longer exists.	Noted. Please see section 3(3) of the Insurance Acts that provides for a general right to appeal in respect of all decisions of the Registrar under the Acts. The reference to the right to appeal in section 26 is an anomaly and creates legal uncertainty as not every other provision in the Acts that allows for administrative decisions has a similar reference.
7.	ASISA	General	**Financial Services Laws General Amendment Bill:** The Bill contains references to the Financial Services Laws General Amendment Act 2013. It is assumed that these references were included for practical reasons in anticipation of the Financial Services Laws General Amendment Bill being passed by Parliament as it is not technically correct to refer to amendments by	Noted. The assumption is correct.

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			an Act that does not yet exist.	
8.	ASISA	General	**Financial implications:** Paragraph 5 of the Explanatory Memorandum contains a statement on the financial implications for the State. The statement indicates that the Bill will have no organisational and personnel implications for the FSB. Whilst it is understandable that there are no financial implications for the State, the same could not be true in respect of the FSB. The Bill increases the supervisory obligations of the FSB and reporting obligations on insurers. This will no doubt require an increase in resources and will lead to an increase in levies on the industry. Cost pressures are ever increasing and it is therefore essential that the costs resulting from the increased obligations and requirements are carefully weighed against the intended benefit thereof.	Noted. While there may be some associated costs of the requirements, these are considered to be outweighed by the benefits thereof to policyholders, in terms of improved safety and stability of the insurance sector.
9.	BASA	General	The amendments include significant sections of the Companies Act, FAIS, PCI specifically relating to an insurer's governance structure; framework; risk management and compliance functions.	Noted. Care has been taken not to duplicate provisions of other Acts. Please provide details of the "duplication" alluded to.
10.	BASA	General	There is an overlap of compliance requirements by the Companies Act thereby a duplication of requirements in the Bill.	Noted. Care has been taken not to duplicate provisions of other Acts. Please provide details of the "duplication" alluded to.
11.	BASA	General	The Bill enforces that directors, senior management and heads of control functions comply with the fit and proper requirements prescribed by the Registrar. However the fit and proper requirements are vaguely defined in the Bill and refer to "qualities of competence and integrity as may be prescribed by the Registrar".	Noted. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties.
12.	BASA	General	There are instances of contradictions in the Bill. For example, it is stated that the Registrar would only permit an Insurer to make available information to third parties if the Registrar is satisfied that there is a secured manner to deliver this information. Thereafter in other sections of the Bill, the Registrar permits an Insurer to provide information to third parties and there is no mention of a secured manner to deliver the information.	Noted. The requirement relating to making information available to third parties is a general provision that applies to the sharing of information in general and must be adhered to at all times. The comment relating to "the Registrar permits an Insurer to provide information to third parties and there is no mention of a secured manner to deliver the information provisions" is not understood. Please provide further clarity. Please see IAIS ICP 3.

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				Note that the provisions relating to the sharing of information will be deleted as information sharing by the FSB has been addressed in the revised section 22 provided for in the FSLGAB. 
13.	BASA	General	The Bill makes provision for the Registrar to be involved in the operational aspects of an Insurers business in that the Bill provides the Registrar with the authority to: • Negotiate agreements with Insurers. • Provide that the Insurer must have certain remuneration and investment policies which contain provisions as may be prescribed by the Registrar. • Require that an Insurer as part of its risk management framework have explicit investment; remuneration; reinsurance and insurance fraud risk management policies. However the details of these policies are vague and ambiguous. • Change the composition board of directors wherein the Registrar may instruct the Insurer to remove a director from its board of directors. • Terminate the appointment of a person in senior management or head of a control function, public officer, auditor, etc. within a period of 14 days. The Bill also mentions that a statutory actuary would play a vital role in the risk management of an insurer's business. The Bill has incorporated the process to follow during acquisitions as well as the Registrar's approval thereof.	Noted. Clarity is required about the exact concern with these provisions as they have not been clearly expressed The powers afforded to the with respect to governance requirements are consistent with international standards as contained in the IAIS ICPs. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties.
14.	BASA	General	Although section 22(1) of the principal Act makes provision for the Registrar to remove a person from a senior management post, the proposed Bill in Section 11 does not make provision for an appeal process as in the principal Act but rather provides for the individual's appointment subject to the condition of that the	Noted. Please see section 3(3) of the Insurance Acts that provides for a general right to appeal in respect of all decisions of the Registrar under the Acts.

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			Registrar may remove him/her if he/she does not conform to the fit and proper requirements. Should the matter be referred to the Labour Court, who would take responsibility for a possible claim? The 14 days period also makes it impossible to take the necessary procedural steps in terms of the Labour Relations Act (Legal pluralism).	Please note that the provision provides for the removal from or termination of an appointment and obliges the insurer to ensure that the persons does not involve him/herself with the oversight, management or control functions of the insurer. The provision does not require termination of any employee-employer relationship. A person may remain in the employment of the insurer, but may no longer perform the functions associated with the relevant appointment.
15.	BASA	General	The Bill is contradictory with regard to the composition of the audit committee in that in one instance it states that members of the audit committee cannot be employees of the Insurer and in other instances it mentions that audit committee members are management of an insurer, (Short Term).	Comment not understood. Please clarify. Further, amendments to this section will be proposed. Please see response to comments on section 14D below.
16.	SAIA	General	(11) The Registrar may where practicalities impede the strict application of this Act or any provision of this Act, by notice on the **official web site** exempt any person or short-term insurer from this Act or any provision of this Act on the conditions determined in the notice. (15) The Registrar must when acting under subsection (13) or (14) publish a draft of the requirements to be prescribed or an interpretation guideline on the **official web site** together with a notice calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. 41. (1) This Act is called the Insurance Laws Amendment Act, 2013. (2) The Registrar may, by notice on the **official web site—** (a) delay the implementation of a provision of this Act for a transitional period not exceeding one year from the date when this section takes effect. The SAIA has noted that it is the intention of the Registrar to make use of the official web site for the formal publication of notices. The SAIA has previously, via comments on the 2013 Financial Services	Noted. The issue has been discussed by the ITC department of the FSB with the SAIA and that the SAIA is participating in the testing of the new website to ensure that its concerns are addressed.

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			Laws General Amendment Bill, highlighted challenges and concerns experienced by the industry with regards to the use of the FSB's website, and the implication that it may have if formal publication is done on the official website, if the information cannot be accessed by the industry due to various reasons. Further to the above the SAIA strongly encourages the FSB to continue distributing these notices and publications to the Public Officers in order to alert and make the industry aware of these notices, in order to avoid the risk of crucial information not being relayed to the industry.	
17.	SAIA	General	Throughout the Bill reference is made to the following statement: "as may be prescribed by the Registrar" – The SAIA kindly requests that these draft Regulations are urgently made available for industry to review and consider.	Noted. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties.
18.	SAIA	General	The SAIA has noted with concern that references are made throughout this Bill to the "Financial Services Laws General Amendment Act, 2013" which at the date of the release of this Bill itself is still being considered by Parliament as a Bill and not an Act therefore open / subject to alterations and deletion.	Noted. These references were made for practical reasons in anticipation of the FSLGAB being passed by Parliament. Once the Bill is enacted the necessary amendments will be made. 
19.	Mike Ilsley Independent	General	**The need for checks and balances in respect of the increased powers conferred on the Registrar under the ILAB:** The ILAB confers, in various sections, increased powers on the Registrar. This applies both to matters which may be prescribed generally for all insurers and to instructions which may be issued to specific insurers under the Registrar's expanded authority under the ILAB. These increased powers are to subject to any specific requirements regarding the due process to be followed. In my view, the basis upon which increased powers have been conferred upon the Registrar under the ILAB creates an unacceptable risk of inappropriate regulation that is not subject to any due process or consultation. I respectfully suggest that there is a need for checks and balances to be incorporated in the amending legislation to mitigate the undue risk of inappropriate regulation. Possible examples of inappropriate regulation include: Prescription of excessive levels of capitalisation, which are inappropriate in relation to an insurer's risk profile, and unfairly impede the insurer's capital efficiency and competitive position in relation to alternative product providers which are not subject to the same requirements	Noted. PAJA applies to any administrative action unless same is exempted under section 2 of PAJA. The actions of the Registrars of Long- and Short-term Insurance are not exempted under section 2 of PAJA. Section 3(2) of PAJA therefore applies. Section 3(3) of the Insurance Acts further provides for a general right to appeal in respect of all decisions of the Registrar under the Acts. The authority afforded to the Registrar in the Bill is consistent with international standards. See in this regard the IAIS ICPs. An Alternative Dispute Resolution ("ADR") process is not supported, specifically as the Enforcement Committee of the FSB may enter

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			(such as the excessive capitalisation requirements iposed on pure investment-linked insurance providers under the interim capital measures) and Misguided instructions issued in relation to outsourcing activities, which do not match the risks involved and unfairly impede business efficiency. (Please note that I have no clients impacted by the above examples). This could possibly be addressed by introducing provisions along the lines of those provided for by the Alternative Dispute Resolution ("ADR") process under the Income Tax Act, but suitably adapted for this specific legislative purpose (including making provision for the speedy resolution of any disputes to facilitate rapid regulatory action when required) . Alternatively, National Treasury and/or the Financial Services Board may wish to consider conducting research into checks and balances provided for in insurance regulations in other countries, such as Australia, Europe and North America. Appropriate provisions could then be introduced in the amending legislation based on what is assessed to be the best international practice.	into settlements. Appropriate checks and balances are provided for in the Bill.
20.	eThekwini Municipality	1 of LTIA & STIA	The definition of 'control function' in section 1 refers. It is submitted that the words 'within a governance framework' are deleted as they are superfluous.	Agreed. 
21.	Alexander Forbes Life	1 of LTIA & STIA	Registrar must provide more guidance on what kinds of operational processes & procedures an insurer who is part of a group structure must put in place as such "control functions" may be controlled or already catered for at group level.	Noted. The outsourcing of a control function is provided for in the Bill. This means that an insurer that outsources a control function to another entity within the group must comply with the requirements relating to outsourcing. No additional guidance on operational processes and procedures is therefore necessary.
22.	ASISA	1 of LTIA	'fit and proper requirements' means[, ~~amongst others~~]— (a) in relation to a director, senior management and head of a control function, qualities of competence and integrity as may be prescribed by the Registrar; (b) in relation to a person to whom a control function is outsourced, qualities of competence and integrity as may be prescribed by the Registrar; and (c) in relation to any person that directly or indirectly controls a	Noted. Please note that this definition will be deleted. The definition as provided for in the FSLGAB will remain. 

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			long-term insurer within the meaning of section 2(2) of the Companies Act, qualities of integrity and financial standing as may be prescribed by the Registrar; ASISA members suggest that the words —amongst others be deleted as it will lead to uncertainty. These words are open ended. It is believed that the clause will achieve its object without the inclusion of these words.	
23.	SAIA	1 of STIA	Definition of "fit and proper requirements". Reference is made to "amongst others" in the definition. It is not clear what is intended within the context of the definition. Delete reference to "amongst others". Definition to commence as follows: "'fit and proper requirements' means,…". Reference is made in Clause 111(d) in the FSLGAB of "financial standing.." which applies across the board whereas in the definition of fit and proper in the ILAB financial standing only applies in relation to paragraph (c) of the definition	Noted. Please note that this definition will be deleted. The definition as provided for in the FSLGAB will remain. 
24.	Lion of Africa[2]	1 of LTIA & STIA	In relation to the "Fit and Proper" definition We submit that competency for Fit and Proper purposes, should not include qualification requirements or qualification lists as this may be overly prescriptive and may result in skilled directors being precluded in terms of this legislation, which would exacerbate the issue of the shortage of skilled and competent directors in SA. "Integrity" of a Company should be defined in the Act.	Noted. Please note that this definition will be deleted. The definition as provided for in the FSLGAB will remain. 
25.	Oasis Crescent Insurance Ltd	1 of LTIA	Definition of "fit and proper requirements": The imposition of financial soundness requirements on the holding companies of small insurers, that are not listed and are only licensed to sell linked products (i.e. does not carry any risk on their balance sheets), that meet all the prescribed financial soundness criteria at the solo entity level, is very onerous on those holding companies. It will result in additional capital of the group being tied up in the holding company. We are of the opinion that, where the solo insurer meets all the financial soundness requirements, the	Noted. The definition as set out in section 1 (c)(c) of the Bill does not impose any financial soundness requirements on the holding company of an insurer. It places a requirement for any person that directly or indirectly controls a long term insurer to have financial standing as may be prescribed by the Registrar. This is an important quality and is required, even in the example set out by the

[2] Means Lion of Africa Insurance Company Limited and Lion of Africa Life Assurance Company Limited.

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			solvency and liquidity rules in terms of the Companies Act, 2008 provide sufficient regulation for the financial stability of companies.	commentator. The objective of insurance group supervision is to ensure that groups which include registered insurers are financially sound and that group activities and inter-relationships do not adversely affect the financial soundness of those registered insurers. This is designed to reduce the risk of financial contagion across members of the group and enhance the protection of policyholders. The comment on the limited risk a pure linked insurer is exposed to it is noted. However, it remains important to apply groups supervision to such groups because - · the activities of these groups are interlinked and interdependent (such as asset management, CIS, LISPS providers and the like); · the solvency calculation of the solo insurer does not take into account all the risk (such as reputational risk) that the group as a whole is exposed to; and · the insurers in the group remain custodians of policyholders' funds.
26.	Regent[3]	1 of LTIA & STIA	"Fit and Proper" "as may be prescribed by the Registrar" this phrase is too wide. We suggest that "as may be prescribed by the Registrar" be deleted. The practical implications on contracts of employment need to be borne in mind. To the extent that a person complied with fit and proper requirements at the time of his employment, he may not meet those requirements a later stage should the Registrar decide on more onerous requirements. This may lead to substantive unfairness. The phrase "as may be prescribed by the Registrar" appears throughout – for legislative certainty and if the proposal to delete the reference to "as may be	Noted. This definition will be deleted. The definition as provided for in the FSLGAB will remain.  However, note that the powers of the Registrar that have been introduced with respect to governance requirements are

[3] Means Regent Insurance Company Limited and Regent Life Assurance Company Limited.

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			prescribed" is not accepted then those requirements must be established/prescribed upfront. This phrase should be deleted throughout the document. It is undesirable for there to be uncertainty as to the criteria to be applied to matters such as fit and proper. Companies are legal entities that act through the board and employees. We suggest that Fit and Proper be limited to qualities of competence and integrity and that cognisance be taken of Discussion Document 81 which provides practical guidance on the issue of Fit and Proper and which correctly states that the Board of Directors is responsible for monitoring fit and proper requirements on an ongoing basis. This is in our view the correct approach as ultimately the board is responsible for the Company as a whole. This approach will also mitigate the risk of different rules and requirements being placed on different Insurers.	consistent with international standards as contained in the IAIS ICPs. Further note that section 22 of the LTIA and section 21 of the STIA (as amended) provides for the removal from or termination of an appointment and obliges the insurer to ensure that the persons does not involve him/herself with the oversight, management or control functions of the insurer. The provision does not require termination of any employee-employer relationship. A person may remain in the employment of the insurer, but may no longer perform the functions associated with the relevant appointment. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties.
27.	Alexander Forbes Life	1 of LTIA & STIA	Concern that "fit and proper requirements" under the LT Insurance Act are not aligned with the FAIS "fit and proper" since it is likely that such persons who need to be "fit and proper" are already key persons under FAIS In addition to the FSB providing guidance on fit and proper requirements and applying fewer fit and proper requirements on smaller companies, the LTI Act "fit and proper" requirements must be aligned with those under FAIS. 'fit and proper' requirements for shareholders not really appropriate as they are not involved in the day to day to day management of the company –consideration should be given to a different criteria on how they make decisions in relation to the insurer.	Noted. The requirements will be aligned with the FAIS Act to the extent possible bearing in mind that the requirements for insurers and holding companies of insurers may differ as the business conducted differs from that regulated under the FAIS Act. As to shareholders, fit and proper requirements are necessary and consistent with international standards. See IAIS ICP5.
28.	SAIA	1 of STIA	The definition on outsourcing in this Bill differs from the Outsourcing directive. The definition in the ILAB should be the same as in the Outsourcing directive, i.e. it should refer only to 'material functions and management functions' instead of 'all functions'.	Noted. The definition of outsourcing in the Directive does not refer to material or management functions. The Directive defines "outsourcing" as follows: "outsourcing" means an arrangement of any form between an insurer and another person, whether that person is supervised under any law or not, in terms of which that party performs a function or an activity, whether directly or by sub-outsourcing, which would

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				otherwise be performed by the insurer itself.
29.	Lion of Africa	1 of LTIA & STIA	In relation to the "Outsourcing" definition: We require precise clarity on Directive 159.A.i ("the directive") as certain salient provisions are not inserted in the Bill. Therefore will, the directive be superseded / replaced; the provisions not included in from the directive, be incorporated into regulations to follow? Will the outsourcing under ILAB be the primary legislation on insurance outsourcing?	Noted. The Directive will be withdrawn once the ILAB is enacted and the subordinate legislation provided for in the ILAB has been made.
30.	Regent	1 of LTIA & STIA	Outsourcing" the definition of outsourcing in Directive 159 differs to the definition proposed in the ILAB. The words "related to any aspect of the long-term insurance business of the insurer" have been inserted. For purposes of consistency the definitions will need to be aligned subject to our comments as set out below. Insurers have aligned agreements to comply with the Directive. The Directive links outsourcing to an activity that an Insurer would otherwise perform itself. The insertion of this phrase now could lead to insurers being found to be in breach of the ILAB but compliant with the Directive. We submit that the wording as contained in the Directive is clearer and therefore preferable. It is undesirable for the Regulator to view third party providers who merely provide a service to the insurer as providing a service which is related to any aspect of the insurance business of the Insurer. The consequences of the discrepancies in the ILAB and the Directive are unfairly prejudicial to insurers who in good faith took steps to comply with the Directive and will if ILAB is passed in this form, be found to be in breach.	Noted. The definition is consistent with that in the Directive. Please note that the Directive refers specifically to the insurance business of an insurer. See paragraph 1 and footnote 2 of the Directive in this regard.
31.	SAIA	1 of STIA	Cognisance must be taken of the definition of management levels contained in labour legislation. For the purposes of labour legislation senior management may be defined differently.	Noted. The definition was purposefully written to identify those persons that for insurance regulatory / supervisory purposes must be subject to specific requirements provided for in the Acts.
32.	Lion of Africa	1 of LTIA & STIA	In relation to the "Senior Management" definition: Consideration on this definition, i.e. this should be revised to be consistent with the definition of "prescribed officer" as per Regulation 38 read with Section 66 (10) of the Companies Act.	Noted. The definition was purposefully written to identify those persons that for insurance regulatory / supervisory purposes must be subject to specific requirements provided for in the Acts.
33.	Alexander Forbes Life	1 of LTIA & STIA	Companies with flatter management structures are likely to have senior managers reporting to the Chief Executive but however with little or no decision making that may impact on the insurance entity thus inadvertently bringing into the senior management net persons	Disagree. The definition is consistent with the prevailing definition that includes every manager of an insurer who reports directly to the chief executive officer of the insurer.

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			with little or no impact on the running of the insurance entity Some qualification is required that the decision making must have an impact on the insurance entity or must be in relation to a "control function" Alternatively the definition must be limited to persons in charge of a "control function"	It is important that the management team of an insurer meets certain minimum fit and proper requirements.
34.	Regent	1 of LTIA & STIA	Definition of "Senior Management" It is incumbent on the regulator to liaise with the Department of Labour to explain the difference between the term as used in this Act and the term as defined in the Employment Equity Act. To the extent that there are in force directives that reference the term "managing executive" these need to be aligned with the amendments proposed in the ILAB. It appears that the role of the Public Officer is made redundant. Any in force directives etc must be amended to ensure alignment with the ILAB.	Noted. The definition was purposefully written to identify those persons that for insurance regulatory / supervisory purposes must be subject to specific requirements provided for in the Acts. All current Directives and Information Letters are being assessed against the Bill.
35.	ASISA	1A of LTIA	The Object of this Act is to promote the maintenance of a fair, safe and stable long-term insurance market for the mutual benefit and protection of policyholders and long-term insurers. Although it is arguable that the achievement of a stable long-term insurance industry is not achievable if the interests of consumers alone are considered in isolation of the industry, the wording should be explicit that the rights of the consumers need to be weighed carefully against the impact on the industry. Furthermore there may be instances where protection of the insurance industry itself is required (for example, investigation into fraudulent schemes).	Please see ICP 1.3. The interests of insurers are captured in "promote the maintenance of a fair, safe and stable long-term insurance market". It is not the role of the regulator to prescribe requirements to protect insurers; the mandate of the regulator is to protect policyholders.
36.	Lion of Africa	1A of LTIA & STIA	The object of the Act should include the protection of the interests of all relevant stakeholders, including the Regulator, the company, the shareholders, employees and policyholders. This is in line with the FSB broad principles of accountability of the insurer, responsible outsourcing, policyholder protection and management of conflicts of interest.	Noted. The Object of the Act is aligned with international standards. Please see ICP 1.3.
37.	ASISA	4(11) of LTIA	The Registrar may where practicalities impede the strict application of this Act or any provision of this Act, by notice on the official web site exempt any person or long-term insurer from**[this Act or]** any provision of this Act on the conditions determined in the notice. The current wording of the clause may cause difficulty with interpretation. The clause also creates the impression that the Registrar is able to —overridell the Act by exempting a person or long-term insurer from the entire Act subject to conditions. The	Proposed amendment accepted.  Please see precedents in respect of the remainder of the section in the MFMA and PFMA.

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			conditions may be perceived to be creating special dispensations to the potential disadvantage of other persons of long-term insurers who have not been granted a similar exemption. It is accepted that there may be situations where a technical interpretation of the Act may impede acceptable business situations and in such cases the Registrar should be able to grant an exemption but it is uncertain which practicalities may impede the application of the Act. ASISA members suggest that the clause be rephrased according to the example of section 44 of the Financial Advisory and Intermediary Services Act to provide for more objective measures in respect of exemptions. "Section 44 of FAIS Exemptions by registrar and Minister (1) The registrar may on or after the commencement of this Act, but prior to the date determined by the Minister in terms of section 7(1), exempt any person or category of persons from the provisions of that section if the registrar is satisfied that - (a) the rendering of any financial service by the applicant is already partially or wholly regulated by any other law; or (b) the application of the said section to the applicant will cause the applicant or clients of the applicant financial or other hardship or prejudice; and (c) the granting of the exemption will not - (i) conflict with the public interest; (ii) prejudice the interests of clients; and (iii) frustrate the achievement of the objects of this Act. (2) The registrar - (a) having regard to the factors mentioned in subsection (1), may attach to any exemption so granted reasonable requirements or impose reasonable conditions with which the applicant must comply either before or after the effective date of the exemption in the	Consideration will be given to include the following to better align with the Credit Rating Services Act, Financial Markets Act and FAIS Act: "and (c) the granting of the exemption will not - (i) conflict with the public interest; (ii) prejudice the interests of policyholders; and (iii) frustrate the achievement of the object of this Act."

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			manner and during the period specified by the registrar; and (b) must determine the period for which the exemption will be valid. (3) An exemption in respect of which a person has to comply with requirements or conditions, lapses whenever the person contravenes or fails to comply with any such requirement or condition: Provided that the registrar may on application condone any such contravention or failure and determine reasonable requirements or conditions with which the applicant must comply on or after resumption of the exemption as if such requirements or conditions had been attached or imposed on the first granting of the exemption. (4) (a) The registrar may in any case not provided for in this Act, on reasonable grounds, on application or on the registrar's own initiative by notice in the Gazette, exempt any person or category of persons from any provision of this Act. (b) The provisions of subsections (1), (2) and (3) apply with the necessary changes in respect of any exemption contemplated in paragraph (a). (5) The Minister, after consultation with the registrar, may, on such conditions as the Minister may determine, by notice in the Gazette exempt a financial services provider or representative, or category of financial services providers or representatives, from any provision of the Policyholder Protection Rules made under section 62 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), and section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), respectively.	
38.	SAIA	4(11) of STIA	Reference is made to "where practicalities impede the strict application of this Act" Clarity and guidance needs to be provided as to what aspects would be taken into account for the purposes of the application of this clause.	Noted. Please see precedents in respect of the remainder of the section in the MFMA and PFMA. Consideration will be given to include the following to better align with the Credit Rating Services Act, Financial Markets Act and FAIS Act: "and

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				(c) the granting of the exemption will not - (i) conflict with the public interest; (ii) prejudice the interests of policyholders; and (iii) frustrate the achievement of the object of this Act." 
39.	Lion of Africa	4(11) of LTIA & STIA	As regards publication of notices on the official website, we suggest the following: Section 4(11) be amended to read: "Official website and/or other accessible mediums including the Government Gazette." It can be easily assumed that the majority of South Africans do not have access to the internet. Publication purely on the official website will deny a majority of South Africans access to information and/or justice.	Noted. This issue has been discussed by the ITC department of the FSB with the SAIA (of which Lion of Africa is a member) and that the SAIA is participating in the testing of the new website to ensure that its concerns are addressed. The Government Gazette is not that readily available to the general public and financial institutions, and appears not to be regarded as the go to source for determining legislative requirements.
40.	Regent	4(11) of LTIA & STIA	„The Registrar may where practicalities impede the strict application of this Act or any provisions of this Act by notice on the official web site exempt any person…." While we understand that the Registrar is being granted discretion in this regard we submit that in order to ensure transparency that the reasons for deviating from the strict application of the Act are also published. "by notice on the official web site" This is undesirable as it assumes that the website is maintained and updated regularly, that sufficient controls are in place to provide for version control and time and date stamps. The practice and requirement of officially notifying the affected party should not be undermined or take away. The current practice of a written notification being sent to the affected Insurer should be retained to ensure that engagement between Regulator and Insurer is formalised, and properly documented.	See comment above. Noted. The affected person will be notified in accordance with the requirements of PAJA.
41.	Alexander Forbes Life	4(11) of STIA	Notice on official website alone is not sufficient, must be a requirement that the Registrar notifies the exempted party directly.	See comment above.

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			Distinguish notification iro exemptions that are of general application to those that apply to particular insurers Include direct notification to party being exempted unless exemption is of general application How would consultation be facilitated if documents are placed on the website? Can notification or alert facilities be put in place which industry could subscribe to? There is a number of notifications by the Registrar that are now allowed to be done via the "official website" Use of electronic means of communication will exclude any role players who do not have access to computers and internet facilities and no provision is made for the registrar's obligations in publicising this website. Is prescribe the actual notice on the official website or is it the publication allowing for publication on the official website? The concern is how will people who may be affected by the publication know where to look – how is notification going to be done?	
42.	eThekwini Municipality	4(13) and of LTIA	The addition of subsection 13 appears to give the Registrar broad powers to prescribe any requirements. This also appears to be open-ended. It is submitted that a Minister would ordinarily prescribe requirements in the form of regulations.	Noted. It is important to note that inherent in the law-making function of Parliament is the power to assign or delegate subordinate legislative powers to any public official. Principal legislation enacted by Parliament can be viewed as the instrument laying down principles and policies, and subordinate legislation is a legitimate executive instrument to effectively implement the principles and policies contained in the principal legislation enacted by Parliament. Therefore any subordinate legislation cannot exceed the scope of the Act itself.
43.	Alexander Forbes Life	4(13) and of LTIA & STIA	Does a document containing such further "prescribed requirements" constitute regulations? Clarity required on what is regulation and what are interpretation guidelines or a directive. The "Act" already includes any matter prescribed or prescribed by regulation	Noted. The requirements will constitute subordinate legislation. See comment above. Directives constitute administrative action.
44.	SAIA	4(13) and 4(14)(b) of STIA	(b) A person or short-term insurer must adhere to an interpretation guideline until such time as a Court attaches a different interpretation to the subject matter of that interpretation guideline. The SAIA is of the opinion that interpretation guidelines should not be used to set regulations, but rather that interpretation guidelines	Noted. See precedent in the Tax Administration Act in respect of "practises generally prevailing" and general rulings. This provision does not interfere with the jurisdiction of the judiciary as it specifically recognises that interpretation by the Courts will prevail.

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			should be issued by the FSB in order to assist with the interpretation of regulations, and can therefore not be binding. It is therefore suggested that the word "must" be removed from this section and that insurers are rather afforded the opportunity to interpret the guideline and apply it as it pertains to their business, while adhering to the intention of the guideline. This aligns to the objective of moving towards principle-based regulations, opposed to rule-based regulations as envisaged under SAM. Interpretation guidelines should also be subject to industry consultation. **Costs of application** In the event of section 4(14)(b) being retained, the further concern is the issue of costs of going to Court for the variation or overturning of the interpretative guidelines. Who will bear the costs of the application? This becomes paramount, especially if there was a misinterpretation. **Costs of system and process changes** Another concern is the practical implications of section 4(14)(b). Once the Registrar has issued the interpretative guidelines, insurers would be compelled to follow them. This in itself may involve fundamental systems and process changes within the insurance business. If the interpretative guidelines issued by the Registrar are overturned in a subsequent legal challenge, insurers may have expended unnecessary costs. **Who should make application to Court and on whom will it be applicable?** Reference is made to "until ... court attaches a different interpretation". Given the costs associated with lengthy court cases, it is not clear who should actually be making such application to court for another interpretation.	The Court Rules and the presiding officer will make a determination as to costs. Applications will have to be brought by the insurer that disagrees with the interpretation note. Consideration will be given to changing the term "interpretation guidelines" to a term that better reflects the purpose of "interpretation guidelines". 
45.	ASISA	4(14) of LTIA	~~(14) (a) The Registrar may issue interpretation guidelines on the manner in~~ ~~which the Registrar will apply the Act, or any section or sections of the Act for supervisory purposes.~~	Disagree. See precedent in the Tax Administration Act in respect of "practises generally prevailing" and general rulings. This provision does not interfere with the jurisdiction of the judiciary as it specifically recognises that interpretation by the Courts

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			~~*(b)*A person or long-term insurer must adhere to an interpretation guideline until such time as a court attaches a different interpretation to the subject matter of that interpretation guideline.~~ ASISA members suggest that this clause should be deleted. It creates the impression that the Registrar is afforded judicial powers to interpret legislation. The interpretation of statutes is the prerogative of the court. Even if it is for supervisory purposes, it remains of concern that the Registrar's interpretation could only be overturned by a court. It is also uncertain why the Registrar needs to be assigned the authority to issue interpretation guidelines in addition to the current authority to issue directives in order to ensure compliance with or to prevent a contravention of the Act. Guidelines are by nature guidance and not law to be adhered to. If guidance is to be given and insurers expected to adhere thereto, the Act should clearly indicate the scope within which guidance may be given. The potential prejudice from business and cost perspective if an interpretation of the Registrar is overturned by a court at a later date should not be underestimated. From a legal perspective, if an insurer is not in agreement with the Registrar's interpretation and application and has formally challenged this interpretation in court, it cannot be expected that the insurer must comply pending the outcome of the court decision as this would negate the purpose of legal and administrative process.	will prevail. Consideration will be given to changing the term "interpretation guidelines" to a term that better reflects the purpose of "interpretation guidelines". 
46.	Regent	4(14) & (15) of LTIA & STIA	Reference is made to "interpretation guidelines". This is undesirable as it does not achieve legislative certainty. To the extent that legislation requires clarification, the normal legislative process should be followed. This protects the ability of affected parties to provide submissions on the proposals. It is trite law that interpretation guidelines are non-binding and that a party is not bound to follow those guidelines. The primary legislation is the yard stick against which adherence to legislative requirements should be measured. The role of the judiciary is to interpret legislation and to the extent that the Registrar challenges an Insurers compliance with the relevant Act, then the court process should be followed to allow the court to provide its interpretation. This grants the Registrar the power to interpret legislation - this is the role of the judiciary. The ILAB appears to be conferring more	See comment above.

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			powers on the executive arm of government than was intended in the Constitution and therefore we suggest that the ability to issue guidance notes be deleted as the Registrar would in any event be entitled to do that. Those guidance notes however cannot be binding and should not purport to be binding. The requirement that the Registrar must publish the guidance for public comment does not in our view adequately address the concerns raised about the separation of powers and the ability of the Registrar to create legislation. The process of amending law ensures that the executive (which initiates these requests) follows a proper process and this assists in ensuring that important issues are not overlooked in the "law making process". The method of using the government gazette for publication of amendments, notices etc. should be retained. For the reasons set out above. We reiterate that interpretation guidelines are non- binding and proper process must be followed if gaps in legislation are identified.	
47.	Alexander Forbes Life	4(14) & (15) of STIA	This appears to be an attempt to legislate by way of "interpretation guidelines" which does not make for fair and correct application of the law. To the extent that such guidelines constitute law for certainty, the relevant legislative amendments must be enacted The "Act" already includes any matter prescribed or prescribed by regulation-an interpretation guideline does not fall into either. The 30 day minimum period within which comments may be made is rather short as often affected parties need to consult internally on impact of proposals. Provide for a longer minimum period-at least 45 days.	See comment above. The 30 day period is reasonable and consistent with other legislation.
48.	ASISA	4(15) of LTIA	The Registrar must, when acting under subsection (13~~)~~ **~~[or (14)]~~**, publish a draft of the requirements to be prescribed or an interpretation guideline on the official web site together with a notice calling for public comment in writing within a period stated in the notice, which period may not be less than 30 days from the date of publication of the notice. Please refer to the comments on clause 3 and the proposed introduction of section 3(14) in the Act	See comment above.
49.	ASISA	4(16)(b)(iii) of LTIA	~~(b) The Registrar must –~~ ~~(iii) only allow information provided to a regulatory authority to be made available to third parties if the Registrar is satisfied that the~~	Please see ICP 3 and current section 22 of the FSB Act. Note that the provisions relating to the sharing

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			~~third parties have appropriate safeguards in place to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law; and~~ It is submitted that information should not be provided to third parties unless required by law, in which case it does not need to be legislated. If it is retained, the wording should be aligned with the Protection of Personal Information Bill which speaks to more than just confidentiality.	of information will be deleted as information sharing by the FSB has been addressed in the revised section 22 provided for in the FSLGAB.
50.	SAIA	4(16)(b)(iii) of STIA	iii) only allow that information provided to a regulatory authority may be made available to **third parties** if the Registrar is satisfied that the third parties **have appropriate safeguards in place** to protect the confidentiality of the information, which safeguards must be similar to those that the Registrar is subject to under law; and The SAIA is unclear as to what is meant by "third parties" and as such requests clarity. Policyholder information should be safeguarded and is also subject to other legislation such as POPI that could lead to non-compliance with that act should the information be shared. This section should be cross- referenced to similar provisions under the Protection of Personal Information Bill, in particular the provisions dealing with cross boarder flow of personal information. Furthermore, in order to protect South African entities this section should place an obligation on the Registrar to ensure that the foreign regulatory authority to whom the information is transmitted should have adequate data privacy protection measures in place which includes all processing of personal information as contained in the Protection of Personal Information Bill before such information is exchanged.	Please see ICP 3. Note that the provisions relating to the sharing of information will be deleted as information sharing by the FSB has been addressed in the revised section 22 provided for in the FSLGAB.
51.	ASISA	4(16)(c)(iii) of LTIA	~~The Registrar must, when requesting or obtaining information—~~ ~~(iii) not make the information available to third parties without the consent of the regulatory authority that provides the information;~~ Please refer to the comments on clause 3 and the proposed introduction of section 4(16)(b)(iii) in the Act.	See comment above.
52.	eThekwini Municipality	4(16)(c)(iii) of LTIA & STIA	The word 'and' must be inserted after the words 'provides the information'	Noted.
53.	Alexander	4(16) of STIA	The concern is where the Registrar obtains information that may be used in litigation with the parties concerned. Restrict the information	See comment above.

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	Forbes Life		that the Registrar may request to that which pertains to the insurer. Provision of information to the Registrar should be subject to Intellectual Property and any applicable protection of information provisions as not all info under the insurer's control is the insurer' info -. Insert a specific exemption iro information that may be in contemplation of litigation as such information must be recoverable under rules of court on evidence. Is this subject to the Promotion of Access to Information Act? Is this subject to Promotion of Administration of Justice Act? The enquiry to any one of those parties may be the subject of any other legislative and contractual obligation; hence third parties may be in breach of contractual obligations, resulting in other repercussions.	
54.	Oasis Crescent Insurance Ltd	4(16) of STIA	Whereas we are in agreement with the sharing of information between regulatory authorities, we believe that the Registrar should inform the insurer in instances were information is made available to another regulatory authority. This will ensure transparency and allow the insurer to be in a position to respond to queries from other regulators more timeously. Whereas we are in agreement with the sharing of information between regulatory authorities, we do not believe that there is any reason why an insurer's information should be made available to a third party, unless such disclosure is required in terms of the laws relating to that particular regulatory authority or the insurer.	See comment above.
55.	eThekwini Municipality	4(16)(a)(ii) of LTIA	The addition of 16(a)(ii) refers to the words 'to deter, prevent, detect, report and remedy fraud in insurance'. It is submitted that the sequence of these words should rather read 'to detect, report, prevent, deter and remedy fraud in insurance'. This also applies in section 14H(2)(f).	Disagree. The sequence of the words is appropriate here and at 14H(2)(f).
56.	SAIA	4(17)(b)(ii) of STIA	negotiate agreements with any regulatory authority to— (aa) co-ordinate and harmonise the reporting and other obligations of short-term insurers; (bb) provide mechanisms for the exchange of information; and (cc) provide procedures for the coordination of supervisory activities to facilitate the monitoring of insurance business on an ongoing basis The SAIA recommends that the insurer is informed when	See comment 49 above.

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			information is shared with another regulatory authority. The existence of any such agreements should be disclosed to the relevant insurers, along with the relevant parts impacting on insurers. The local regulator (FSB) must ensure that safeguards are in place to ensure that information remains confidential when shared with another regulator; including cross border sharing of information.	
57.	SAIA	4(17)(c) of STIA	(c) Without detracting from the generality of paragraphs (a) and (b), the Registrar may enter into a written cooperation agreement, including a memorandum of understanding, with a regulatory authority, including a regulatory authority in whose country a subsidiary or holding company of a short-term insurer is incorporated or a branch is situated. The SAIA strongly encourages the Regulator to share the agreement and MOU with the insurer / insurance group for input and for information.	See comment above.
58.	SAIA	4(17)(d) of STIA	Inspection by a foreign Regulator on a local short-term insurer should not be allowed without the approval and presence of the FSB / Local Regulator.	See comment above.
59.	Regent	4(16) & (17) of LTIA & STIA	The decision as to whether to provide information relevant to another regulatory authority rests solely with the Regulator. We suggest that prior to making such disclosure that the Insurer is notified of the Registrars intention so that the Insurer can contextualize the request and /or object if there are grounds to do so. We would like to obtain clarity if it is the intention for this to apply only to entities that have a holding company that sits outside of the Republic. We suggest that that would in fact be the better approach. The Registrar is empowered to proactively provide information which the Registrar deems relevant to regulatory authorities that the Registrar deems to have a material interest in a short-term insurer. “material interest “ must be narrowly construed and it is preferable for this to be defined upfront - We submit that where the Insurer concerned has an off- shore holding company that the Registrar to which the Holding Company is accountable could be deemed to have a material interest in the local insurer. It should not extend beyond that example. In light of the FSLGAB where it is proposed that the Registrars	See comment above.

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			liability be limited, we suggest that wherever the Registrar unilaterally decides to make information available to any third party that the limitation of liability should not apply. The consequences of a data breach in light of POPI are severe and the Registrar must ensure that it has satisfied itself that the information is secure in accordance with our local requirements. Suggest that the reference to "third parties" is deleted- this introduces a layer of risk in relation to what that information is used for. The Insurer remains liable to its policyholders in terms of personal information and the FSLGLAB clear states that in the absence of misconduct on the part of the regulator that the regulator cannot be held accountable. This places the insurer in an untenable situation not of its own making. "prior to taking regulatory action which the registrar deems material against a person referred to under (a)(i), inform the relevant regulatory authority…." The cross reference requires clarification.	
60.	Lion of Africa	4(17)(d) of LTIA & STIA	Where an "onsite examination" is to be conducted in terms of section 4 (17)(d), the Registrar should demonstrate probable cause for same. Due cognisance should be taken of other South African legislation such as the Constitution and the Criminal Procedure Act.	Noted.
61.	eThekwini Municipality	4(17)(d)(iv) of LTIA & STIA	It is submitted that the list here includes the word 'or' and the word 'and' and it is submitted it is not clear what type of list is intended to be created in this provision.	Noted. "and" and "or" will be inserted where appropriate. 
62.	Lion of Africa	4(18) of LTIA & STIA	4(18)(b): The difficulty with the reference to "international regulatory and supervisory standards" in this section are that they are not defined herein, and may not always apply in a South African context. Cognisance needs to be taken as to whether these standards are in line with our Constitution and other laws. "Must" should accordingly be changed to "May". 4(18)(c): "proportionate" should be defined.	Noted. International standards can only apply to the extent that they are consistent with the South African legislative framework, including the Constitution. As to the definition of proportionality – the ordinary meaning of the term applies. Proportionality is a criterion of fairness and justice in statutory interpretation processes that assist in discerning the correct balance between requirements imposed by legislation and the impact or severity of the nature of the requirements.

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63.	SAIA	9(3)(a) of STIA	unless the applicant— (i) is a public company **[and has the carrying on of short-term insurance business as its main object]** whose primary business activity is the conducting of short-term insurance business *and operations arising directly therefrom*; or (ii) is **[incorporated without a share capital under a law providing specifically for the constitution of a person to carry on short-term insurance business as its main object]** a company other than a public company referred to in the definition of ''company'' in section 1 of the Companies Act or is an association of persons formed or established under an Act of Parliament whose sole business activity is the conducting of short-term insurance business *and operations arising directly therefrom*. The SAIA is of the opinion that "and operations arising directly therefrom" should be removed from Sections (i) and (ii) above as it is sufficiently clear without this additional wording / statement.	Agreed. 
64.	ASISA	9(3)(b) of LTIA	An application referred to subsection(1) shall not be granted by the Registrar - (b) unless the applicant demonstrates to the satisfaction of the Registrar that – (i) the applicant has complied and**[in future will be able]** <u>taken appropriate measures to continue</u> to comply with the governance framework and financial soundness requirement of this Act; (ii) the directors, senior management and heads of control functions of the applicant meet the fit and proper requirements; (iii) any persons that directly or indirectly control the applicant within the meaning of section 2(2) of the Companies Act, meet the fit and proper requirements; It may be very difficult for insurers to demonstrate that they will always in future be able to meet the governance and solvency requirements. It is suggested that the clause be rephrased to indicate that the applicant has demonstrated that appropriate	Agreed. 

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			measures have been taken to continue to comply.	
65.	SAIA	9(3)(b) of STIA	Section 9(b)(i) – "…applicant has complied and in future will be able to comply…" It is submitted that this is an onerous requirement on insurers. Propose that the section be amended to read "…applicant has complied and have appropriate measures in place to ensure compliance…". Section 9(b)(iii) – "… any persons that directly or indirectly control applicant…meet the fit and proper requirements." How is it proposed that insurers (the applicants) discharge this obligation in respect of minority shareholders of the holding company of which the insurer is a subsidiary? Guidance needs to be provided to assist applicants in discharging this obligation.	Noted. The provision will be amended to read as follows: "(i) the applicant has complied and **[in future will be able]** <u>taken appropriate measures to continue</u> to comply with the governance framework and financial soundness requirement of this Act;"  Please note that control is defined in section 25 of the STIA. [Please read section 25 with the FSLGAB]. Insurers should be aware of who controls them.
66.	Oasis Crescent Insurance Ltd	9(3)(b) of LTIA	Paragraph (b) (iii): this paragraph requires the person in control of an insurer (e.g. its holding company) to meet the fit and proper requirements. The fit and proper requirements in relation of a person that directly or indirectly controls an insurer are defined to include, amongst others, financial soundness requirements. The financial soundness requirements are contained in Part IV of the Act (sections 29-36). The financial soundness requirements include the requirement to meet Capital Adequacy Requirements (CAR). It is important to note that this paragraph does not limit the financial soundness requirements to the requirements as set out in the proposed Part VIIA. Paragraph (b) (iii) as it stands will require the person that directly or indirectly controls an insurer to have CAR reserves. How will this CAR be calculated? This will place significant strains on the group as it will effectively be required to hold double the CAR of the insurer. The proposed section should be amended in order to remove any ambiguity with regards to the financial soundness requirements.	See comment 25. Also see the financial soundness requirements proposed for insurers and groups in the Bill.
67.	Regent	9(3)(b) of LTIA & STIA	Does this apply to existing relationships? This places an obligation on non-insurance related entities to comply with Fit and Proper requirements. Suggest deletion/exemption for those relationships already in existence. The discretion granted to the Registrar is undesirable. Fit and Proper must be determined by the company in accordance with the general principle that Fit and Proper includes	Noted. The requirements will be prospective and appropriate transitional arrangements will be provided for at the time that these requirements are prescribed.

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			Competence and integrity. SAM speaks to the concepts of nature scale and complexity in various contexts. This is something that the Insurer is better placed to make an assessment about. This needs to be applied to the assessment of Fit and Proper.	
68.	ASISA	9(3)(d) of LTIA	An application referred to subsection(1) shall not be granted by the Registrar - (d) if the registration of the applicant will be contrary to the interests of prospective policyholders or the public interest. ASISA members suggest that the reference be to prospective policyholders to improve the reading of the clause as policyholders will not exist prior to the registration of the insurer.	Agreed. 
69.	Regent	9(3)(d) of LTIA & STIA	A new requirement is proposed- namely that the "registration of the applicant will not be contrary to the interests of policyholders or the public interest". Who has the burden of proving this? It is submitted that the registrar should bear the burden of proving that registration will be contrary to interests of policyholders or the public interest.	Noted. This requirement is consistent with the existing requirements of section 9 of the LTIA & STIA. The interests of prospective policyholders are aligned to the public interest.
70.	ASISA	10 of LTIA	The conditions contemplated in section 9(2)(a) may include conditions - (fA) relating to the **insurance** business arrangements of the long-term insurer, including, but not limited to, the outsourcing arrangements that the long-term insurer may enter into; It is suggested that it should be specified that the conditions that may be set by the Registrar must relate to the insurance business arrangements and not business arrangements in general. The Registrar should not have unfettered discretion in respect of all business arrangements of the insurer.	It is the intention for the provision to apply wider than insurance business to ensure that such other arrangements do not impede an insurer's ability to conduct insurance business.
71.	Regent	10 of LTIA & STIA	Proposes inserting a reference to Outsource agreements in the context of the Conditions of registration. The conditions currently relate primarily to Prudential and market conduct considerations. The inclusion of Outsourcing arrangements appears to involve the Regulator in the day to day operations of the Insurer. The principle of fairness and consistency of rules applicable will be undermined if a category such as Outsourcing is included – i.e. The regulator will be authorised (wide of the act) to impose further requirements in relation to Outsourcing which the Act does not impose. The insertion seems to imply that re insurance is linked to Outsourcing	Noted. This provision is important to ensure that appropriate outsourcing and other business arrangements are entered into by insurers post registration.

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			– merely by placing it as (fA) - rather insert a new (i). We consider it to be a new point please confirm if our understanding is correct.	
72.	ASISA	11(1) of LTIA	The Registrar may by notice to the long-term insurer amend, delete, replace or impose additional conditions contemplated in section 10, subject to which the long-term insurer is registered or deemed to be registered— (a) upon application by a long-term insurer and having regard, with the necessary changes, to section 9(3)(b); (aA) when in the public interest or the interests of the policyholders, or potential policyholders of the long-term insurer; (b) when acting in accordance with section 12(2) or (3) or when giving an authorisation in accordance with section 35(2)(a) in relation to a long-term insurer; or (c) if a long-term insurer has ceased to enter into certain long-term policies determined by the Registrar to an extent which no longer justifies its continued registration in respect of those policies, and the long-term insurer has been allowed at least 30 days in which to make representations in respect of the matter~~[, by notice to the long-term insurer vary a condition, subject to which the long-term insurer is registered or deemed to be registered, by amending or deleting it, or determine a new condition contemplated in section 10]~~ **Provided that the Registrar –** **(i) notifies the long-term insurer of its intention to amend, delete, replace or impose additional conditions contemplated in section 10;** **(ii) provides the long-term insurer with the reasons for the amendment, deletion , replacement or additional condition; and** **(iii) provides the long-term insurer with an opportunity to object to the amendment, deletion, replacement or additional condition.** Even though the FSB is subject to the Promotion of Administrative Justice Act, ASISA members suggest that this clause specifically	Noted. PAJA applies to any administrative action unless same is exempted under section 2 of PAJA. The actions of the Registrars of Long- and Short-term Insurance are not exempted under section 2 of PAJA. Section 3(2) of PAJA therefore applies. Although a reference to PAJA in the Insurance Laws may be of assistance to persons reading the legislation, such would have wider implications for the Long- and Short-term Insurance Acts and the Acts administered by the FSB (and probably most legislation currently on the statute books) as this would imply that all Acts would have to reference PAJA.

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			include an obligation on the Registrar to engage with a long-term insurer in respect of the amendment of conditions of registration prior to amending the conditions of registration. Legal certainty in this respect is important to the long-term insurance industry even more so with the inclusion of the consideration of the public interest.	
73.	Lion of Africa	11 of LTIA & STIA	Any notice given by the Registrar should be in writing. The insurer should have the right to make representations prior to any change to licence conditions, where such change was not applied for by the insurer, unless the Registrar has evidence that exceptional circumstances exist and/or imminent loss may occur to policy-holders.	Noted. PAJA applies to any administrative action unless same is exempted under section 2 of PAJA. The actions of the Registrars of Long- and Short-term Insurance are not exempted under section 2 of PAJA. Section 3(2) of PAJA therefore applies. Section 3(3) of the Insurance Acts further provides for a general right to appeal in respect of all decisions of the Registrar under the Acts.
74.	Regent	11 of LTIA & STIA	"The registrar may by notice to the short-term insurer, amend, delete replace or impose additional conditions contemplated in subsection 10 " The principle of fair administrative action must be adhered to - The amendment of license conditions could potentially have a severe impact on the insurer concerned and therefore on policyholders as well. To the extent that the Registrar contemplates an amendment of existing license conditions, proper process needs to be adhered to and the audi alterum partem rule must be applied. If the wording is changed to read" the registrar shall notify the Insurer of its intention to amend…." Then the concerns are adequately addressed.	See comment above.
75.	Alexander Forbes Life	11 of LTIA	No minimum notice is prescribed thus leaving it entirely up to the Registrar to determine the notice period that will apply. Insert after "by" on reasonable or no less than 30 days notice----------"	Noted. Consideration will be given to the comment.
76.	Oasis Crescent Insurance Ltd	Part IIA of LTIA	The Bill brings about significant changes in respect of the governance and structures of long-term insurers. Whereas these changes are welcomed in as far as they will bring about improved governance and policyholder protection in large, complex insurance groups with significant risk on their balance sheets, it is submitted that compliance with these changes will place significant strain on small, investment linked insurers that have no risk on their	Noted. The governance framework requirements should equally apply to linked insurers albeit in a proportional manner. It must be noted that linked insurers – · are exposed to risks (such as operational

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			balance sheet. We proposed that the Bill be amended to take into account insurers that have no risk on their balance sheets because their license restricts them to writing investment linked policies. These amendments should make provision for investment linked insurers to be exempt from the onerous requirements of PART IIA and PART VIIA to the extent that it would be in the best interest of the policyholders.	and credit risks); and · as insurers are custodians of policyholder funds.
77.	ASISA	14A of LTIA	(1) A long-term insurer must adopt, implement and document an effective governance framework that provides for the prudent management and oversight of its long-term insurance business and adequately protects the interests of its policyholders. (2) The governance framework must be proportionate to the nature, scale and complexity of the long-term insurance business and risks of the long-term insurer, and must provide for at least,— (a) an adequate transparent organisational structure with a clear allocation and appropriate segregation of responsibilities; (b) compliance with this Act and any requirements as may be prescribed by the Registrar in respect of— (i) fit and proper requirements for directors, senior management and heads of control functions; (ii) the risk management system referred to under section 14G; (iii) the internal control system referred to under section 14I; (iv) control functions referred to under section 14J; and (v) outsourcing referred to under section 14L; (c) written policies, approved by the board of directors, that comply with this Act and any requirements as may be prescribed by the Registrar; (d) any other requirements as may be prescribed by the Registrar. (3) The Registrar may, from time to time,— (a) review a long-term insurer‘s governance framework or require the board of directors or senior management, or both, of the long-	Noted. The governance framework may be outsourced within the group; where it or aspects thereof are outsourced the insurer must still be able to oversee the proper performance of outsourced activities. The insurer should apply the same due diligence in adopting group structures and / or individuals as it would if it was not intending to utilise group resources.

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			term insurer to demonstrate that the governance framework requirements provided for in this Act are being complied with; and (b) direct the long-term insurer, its board of directors or senior management, or both, to strengthen and effect improvements to its governance framework or a part thereof. The application of this clause in relation to groups of companies of which long-term insurers form part is uncertain. Where appropriate, governance frameworks could be set at group level and it is uncertain whether these should be duplicated at the level of the insurer. It is understandable that a group policy may not necessarily be specific to the long-term insurer and that the long-term insurers may need to augment the group framework in relation to the long-term insurance business and policyholders but where it is not necessary, duplication should not be mandatory. It is thus of utmost importance that the matters to be prescribed are subject to a robust consultation process in order to improve legal certainty.	
78.	Regent	14A(2)(b) & (d) of LTIA & STIA	The phrase "as may be prescribed by the registrar" again appears in relation to requirements placed on the Insurer. In order to ensure that there is clarity requirements must be set out up front to allow industry to provide its input on what it deems feasible and acceptable. This will ensure regulatory certainty.	Noted. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties. Further, the FSLGAB has been amended to provide for the Minister of Finance to prescribe a Code of Consultation for the FSB that would also apply in respect of the Insurance Laws.
79.	eThekwini Municipality	14A(2)(c) of LTIA & STIA	It is submitted that the word 'and' be inserted after the semicolon.	Agreed. 
80.	ASISA	14B(1)(a) & (2) of LTIA	(1)(a) In addition to the provisions of the Companies Act— (i) the board of directors of a long-term insurer must at all times ensure that it— (aa) consists of a sufficient number of non-executive directors and independent directors to promote objectivity in decision making by the board of directors; and	Disagree. Subsection (1) is the general requirement. Subsection (2) prescribes additional disclosure requirements where the board does not consist of a majority of non-executive directors of whom the majority is independent directors. This is not contradictory. The proposal in Discussion document 71 can

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			(2)(a) If the board of directors does not consist of a majority of non-executive directors of whom the majority is independent directors, the board of directors must— (i) notify and motivate the composition of the board of directors to the Registrar; and (ii) publicly disclose and motivate the composition of the board of directors together with the long-term insurer's annual financial statements. (b) If the Registrar is of the opinion that the board of directors has failed to comply with subsection (1)(a)(i)(aa), the Registrar may instruct the long-term insurer to change the composition of its board of directors. Whilst clause 1(a)(i)(aa) can be read to mean that the number of non-executive directors and independent directors must be sufficient to the extent that it promotes objectivity, it may also cause confusion as to what will be regarded as sufficient. The uncertainty arises in the potential implication of granting the Registrar the subjective authority (in his opinion) to decide when a number is not sufficient. The references to —majority‖ in clause (2)(a) also creates uncertainty. Clause (1)(a) requires a sufficient number of non-executive and independent directors but clause 2(a) indicates that the board of directors must consist of a majority of non-executive directors. It is also suggested that the recommendations in respect of group structures in SAM Discussion Document 71 be incorporated in this Bill: —Notwithstanding the recommendations for solo entities highlighted above, we would recommend that a (re)insurer, forming part of an insurance group or financial conglomerate could apply at solo level for exemption from complying with the requirements relating to the composition of the Board. This exemption could only be sought should the following conditions be met: The holding company of the insurance group or financial conglomerate satisfies the requirements relating to the composition of the Board, and The chairperson of the Board of the solo entity is represented on the Board of the holding company of the insurance group or financial conglomerate; and The chairperson of the Board of the solo entity	be accommodated in the current wording of subsection (2).

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			would need to document how potential conflicts of interest between the policy holders of the solo entity and the group/financial conglomerate have been adequately addressed. This documentation should be available for inspection by the regulator at any time.	
81.	SAIA	14B(1)(a)(i) PART IIA of STIA	(a) In addition to the provisions of the Companies Act— (i) the board of directors of a short-term insurer must at all times ensure that it— (aa) consists of a sufficient number of non-executive directors and independent directors to promote objectivity in decision making by the board of directors; and (bb) has an appropriate number and mix of individuals to ensure that there is an overall adequate spread and level of knowledge, skills and expertise at board level commensurate with the nature, scale and complexity of the short-term insurer's business and risks. The industry requires at least a one year period in order to comply with this requirement.	Noted. The "comply or motivate" provision in (2) allows for smooth implementation. For example, an insurer may have a board that does not comply with (1), but then motivate this by saying they need a year to make the required changes to their board.
82.	Lion of Africa	14B(1) (a)(i)(bb) of LTIA & STIA	It may not always be possible for the requirement for a mix of individual directors, as there would appear to be a shortage of skilled directors in South Africa. We suggest that a "proportionality rule" be included here.	Noted. The "comply or motivate" provision allows for the application of the "proportionality rule".
83.	ASISA	14B(1)(a)(ii) of LTIA	(1)(a) In addition to the provisions of the Companies Act— (ii) the board of directors of a long-term insurer must at all times ensure that the chairperson of the board of directors of a long-term insurer at all times is an independent director. The SAM Discussion Document 71 states the following: —The composition of the Board should comprise a majority of non-executive directors, the majority of which are independent, with the appointment of the chairperson of the Board being that of an independent non-executive director. However should the latter not be the case, then in accordance with the King III recommendations, the entity would need to appoint a lead independent non-executive of the Board. The latter would require exemption from the	Noted. An amendment to the provision will be proposed to allow for flexibility and proportionality by providing for a "comply or motivate" approach similar to that mooted in respect of the composition of the board and extended to provide for the appointment of a lead independent non-executive where there is no independent chairperson in place. The Registrar will however retain the right to require an independent chairperson where, in the view of the Registrar, there are particular risks to policyholder protection.

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			regulator. We would further propose that the definition of independence and non-executive above align with those contained within King III. It should be noted that there are currently instances where the chairman of the board of directors of a long-term insurer is not independent. These insurers may consider an application for exemption.	
84.	AIG South Africa Limited	14B (1) (a)(ii) of LTIA & STIA	Section 14B(1)(a)(ii) of the ILAB requires the chairperson of the board of directors of an insurance company to be an independent director. As alluded to above, AIG SA and AIG Life SA are part of a multi-national organization with representation in over 130 countries. We are ultimately wholly owned by AIG Inc (the Group Shareholder) and thus have a single ultimate beneficial shareholder. Under the current model, AIG's chief executive officer ("CEO") and the chairperson are both appointed by the Group Shareholder, in consultation with the board. The CEO, by virtue of this structure, has a degree of accountability to the Group Shareholder. We are of the view that ILAB's proposed requirement for the chairperson of an Insurance company to be an Independent Director places the CEO in a conflicted position with regards to his accountability to the Board, the Chairperson and the Group Shareholder. Although mindful of the rationale requiring an Independent Director to Chair the Board of an insurance company, inter alia, increased policyholder protection and the desire for increased independent governance, we submit that the desired outcome could be achieved through maintaining the position under the Companies Act, 2008, requiring the audit committee of a company to comprise exclusively of Independent non-executive directors. Under ILAB, the proposed requirement is that the audit committee of an insurance company should comprise of a majority of Independent directors. Aligning the ILAB requirement to that imposed by the Companies Act, 2008, will in our view, address any independent governance concerns that the National Treasury may have and in addition will certainly result in an increase in policyholder protection standards. In addition, consideration could be given to requiring the appointment of a lead independent director in circumstances where the board chairperson is a group-appointed non- executive director (this is in line with the recommendations of King III). In the circumstances, we respectfully suggest that Section 14B(1)(a) (ii) be amended to accommodate the governance structures of multinational entities operating in South Africa.	See comment above. See comments at section 19 of the LTIA & STIA in respect of the composition of the audit committee.

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85.	ASISA	14B(1)(b)(ii) of LTIA	(b) For purposes of paragraph (a) – (ii) an independent director means a non-executive director who is free from any business or other association that could materially interfere with the exercise of independent judgment. King III defines an independent non-executive director as a non-executive director who: • does not represent a controlling or major shareholder; • does not have a direct or indirect interest in the company; • has not been employed by the company in the past three financial years; • is not a member of the immediate family of an individual who has, in the past three financial years, been employed by the company in an executive capacity; • is not a professional advisor to the company; • is free from any business or other relationship with the company; • does not receive remuneration which is contingent upon the performance of the company. It is suggested that this definition is sufficient and that a different definition in the Long-term Insurance Act is not necessary.	Noted. The requirements under the ILAB are less strict that that provided for under King III. The King requirements will be taken into consideration in drafting of the subordinate legislation referred to in section 14B(1)(c). 
86.	SAIA	14B(1)(a)(ii) of STIA	The board of directors of a short-term insurer must at all times ensure that the chairperson of the board of directors of a short-term insurer at all times is an independent director. Comment: The SAIA would like to reiterate that 60% of the entire insurance industry does not currently have independent non-executive chairpersons for their Boards. This fact is supported by a survey conducted by the SAIA and from a recently published report by the FSB. The proposed requirement suggested in the ILAB is not in the best interest of the policyholder nor the public as this could lead to	Noted. An amendment to the provision will be proposed to allow for flexibility and proportionality by providing for a “comply or motivate” approach similar to that mooted in respect of the composition of the board and extended providing for the appointment of a lead independent non-executive. 

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			the appointment of less experienced individuals to the Boards. The role of the Chairperson of the Board is to steer and guide the insurer and requires significant in-depth knowledge of an extremely complex business environment. Other safeguards for concerns identified by the FSB (pertaining only to a small number of insurers) should rather be sought. The use of Lead Independent Non-Executive Directors could be considered.	
87.	Oasis Crescent Insurance Ltd	14B(1)(a)(ii) of LTIA	We believe that the chairperson of the board of directors should be elected by means of a vote by the board. All directors owe a fiduciary duty to the company and the board and there should thus be no distinction between executive and non-executive directors. All directors are equally accountable under the Companies Act of 2008. The proposed section 14K (4) (b) requires the heads of the control functions to meet with the chairperson regularly. Having an executive chairperson will facilitate compliance with this requirement and ensure that concerns raised by the heads of the control functions obtain an immediate response, rather than having to wait for the next board meeting before these concerns can be raised with the executive. The requirement for a non-executive chairperson is preferable, but the door for having an executive chairperson should not be locked. Where it is appropriate for the nature, scale and complexity of the insurer to have an executive chairman, provided that there is a strong presence of independent non-executive directors with a lead non-executive director.	Disagree. An independent chairperson or at least a lead independent non-executive is essential to ensure the level of independence that is required for good governance. See comment above.
88.	Lion of Africa	14B(1)(a)(ii) of LTIA & STIA	Lion of Africa submits that the Legislator in considering the above principle relating to the independence of the Chairperson of the Board, should take cognisance of principle 2.16 (38) and (39) of the King III Report, in that where a non-executive director is Chairperson of the Board and he/she is not independent as per the definition of an independent director above, the Board should appoint a lead independent non-executive director for as long as the situation exists. Lion of Africa further submits that the above requirement relating to the Independence of the Chairperson of the Board is inconsistent with the Companies Act 2008, in that the Companies Act 2008 is silent on the issue of the Independence of the Chairperson of the Board. Therefore Lion of Africa is of the opinion that section 14B (1) (a) (ii) should be brought in line with the King III Report by adopting the principle of appointing a Lead Independent Director as Chairperson of the Board where the Chairperson of the Board is conflicted or deemed to be conflicted on any matter for as long as the situation exists. Should our submission not be successful, opportunity should be allowed for an	Noted. See comments 83, 85 and 86 above. It must be noted that there is no contradiction with the Companies Act. The fact that the latter Act is silent on the independence of the chair does not preclude the Bill from imposing this requirement.

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			application by the insurer for condonation/ special dispensation and/or exemption.	
89.	Mike Ilsley Independent	14B(1)(a)(ii) of LTIA & STIA	Section 14B(1)(a)(ii) of the ILAB provides that the board of directors of an insurer must ensure that the board chairperson is at all times an independent director. While I understand the motivation for this requirement, in my view it is inappropriate in circumstances where the insurer is a subsidiary of a large financial group. In such group situations, it is appropriate for the chief executive office ("CEO") to be appointed by the shareholder (in consultation with the board) and for the CEO to have a reporting line to the group through the group-appointed nonexecutive chairperson. In my view this interposing of an independent chairperson creates an undesirable conflict in the shareholder-CEO-board relationships. I respectfully suggest that Section 14B (1) (a) (ii) be removed from the amending legislation. The desire for increased independent governance f insurers could instead be achieved by requiring a wholly independent audit committee (as suggested above). In addition, consideration could be given to requiring the appointment of a lead independent director in circumstances where the board chairperson is a group-appointed nonexecutive director (this in line with the recommendations of King III).	See comment 86 above.
90.	RMB Structured Insurance	14B(1)(a)(ii) of STIA	We do not believe that it should be a requirement that "the board of directors of a short-term insurer must at all times ensure that the chairperson of the board of directors of a short-term insurer at all times is an independent director".	Disagree. An independent chairperson or at least a lead independent non-executive is essential to ensure the level of independence that is required for good governance. Also see comment 86 above.
91.	SAIA	14B(1)(b)(ii) of STIA	It is strongly proposed that within the context of the definition of an "independent director" that an independent who serves as a director of an Insurance Group Board, will retain his/her independence should they also serve on one of the group's subsidiary boards.	Agreed. An amendment to the provision will be proposed to allow independence at group to also constitute independence at the subsidiary level. 
92.	SAIA	14B(1)(c) of STIA	The Registrar, for purposes of subsection (b)(ii), may prescribe those matters that must be regarded as materially interfering with	Noted. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and

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			the exercise of independent judgment. These regulations are urgently required in order for insurers to prepare and action.	affected parties.
93.	Regent	14B(1)(c) of LTIA & STIA	The Registrar may prescribe those matters that must be regarded as "materially interfering with the exercise of independent judgement". The criteria need to be objective and we suggest that this sentence be deleted in its entirety. There is guidance in King which should be used as the base for determining whether or not a director is independent. The Board should be entrusted with this decision as it is ultimately responsible and accountable.	Disagree. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties. The King requirements will be taken into consideration in drafting of the subordinate legislation referred to in section 14B(1)(c). 
94.	Professional Provident Society	14B(1)(c) of LTIA & STIA	An independent director means a non-executive director who is free from any business or other association that could materially interfere with the exercise of independent judgment. The term "materially" is not defined. This causes uncertainty especially for an organisation like PPS in which all directors are members of the PPS Holdings Trust because they are professionals. The same concept could be extended to directors in other insurance companies who happen to be policyholders. We recommend that this term be defined clearly.	Noted. See comment above.
95.	Mike Ilsley Independent	14B(1)(c) of LTIA & STIA	Section 14B(1)(b)(ii) provides that for purposes of section 14B(1)(a) an independent director means a non-executive director who is free from any business or other association that could materially interfere with the exercise of independent judgement. This provides a broader definition of independence when compared to the requirements applicable to audit committee members under section 94 (4) of the Companies Act, but excludes certain of the specific independence criteria stipulated in section 94 (4). I respectfully suggest that the independence requirements for directors should duplicate, or cross refer to, the requirements stipulated in section 94(4) of the Companies Act and should then be expanded to include the additional requirement currently provided for in section 14B(1)(b)(ii). These independence requirements should then be applicable to all positions requiring	The requirement is not inconsistent with the Companies Act and will be elaborated upon in subordinate legislation. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties. The Companies Act and King requirements will be taken into consideration in drafting of the subordinate legislation referred to in section 14B(1)(c).

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			the appointment of independent directors.	
96.	Lion of Africa	14B(2)(a)(ii) of LTIA & STIA	We require clarity on the motivation and intention of the publication on financials of the composition of the Board? Is the publication in the financials for disclosure and transparency purposes, or is it aimed to protect the policyholder and industry? If so, how?	Noted. Transparency and disclosure is a cornerstone of good governance. Also, appropriate disclosure allows potential investors and policyholders to better assess the insurer.
97.	SAIA	14B(4)(a)(ii) of STIA	"within one month after the notification referred to in subparagraph (i), submit a plan to the Registrar for approval to meet the requirements referred to in subsection (1) or (3)." It is suggested that provision be made under this section to allow for the insurer, under reasonable circumstances to be able to apply to the Registrar for an extension of the period of one month provided for, to submit a plan to the Registrar as set out in this section.	Noted. Consideration will be given to amending the provision to allow the Registrar to agree to a longer period. 
98.	Regent	14B(4)(a) of LTIA & STIA	The board is provided with a period of 1 month to submit a plan to the registrar for approval. We submit that this time frame is unrealistic and does not take into account the fact that board meetings are usually scheduled quarterly, a new plan will first require board approval before it is submitted to the Registrar in any event. We suggest that this period is left open to discussion between the Registrar and the Insurer involved. The insurer must be allowed to apply for such a longer period as may be required.	See comment above.
99.	Lion of Africa	14B(4)(a) of LTIA & STIA	Section 14B(4)(a) makes reference to "without delay". This should be amended to "within a reasonable period".	An amendment will be proposed to change the words "without delay" to "as soon as reasonably possible". 
100.	Lion of Africa	14B(4)(b) of LTIA & STIA	We submit that it may not be reasonable to expect a monthly report from a Board, especially where such Board will not necessarily be in the full time employ of the insurer (majority independent non-executive directors). We suggest that it would be more reasonable that a quarterly report be submitted.	See comment above.
101.	eThekwini Municipality	14C of LTIA	It is submitted that this section is convoluted. It should be stated that an audit committee must be established in the first instance and the provision should be reconstructed to read in a simpler	Noted. The provision will be amended to align fully with the Companies Act provisions, save

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			manner.	for – · That the provision of the Companies Act that an audit committee need not be appointed if the insurer is a subsidiary of another company that has an audit committee and that audit committee will perform the audit committee functions on behalf of the insurer does not apply; · That the chairperson of the board of directors of the insurer or its holding company (or a lead independent non-executive) may not be appointed as a member of the audit committee; · That the Registrar may grant exemption from the need to have an audit committee; and · That the Registrar may prescribe additional duties to be performed by the audit committee. 
102.	Alexander Forbes Life	14C of LTIA & STIA	**General concerns:** • Reconstitution of the Board and expanding with additional independent non-executive directors • Requirement for segregation and setting up of "control functions" without due regard to size (with reference to CAR) • In section 14C(1) although the provisions appear to leave it up to the insurer to access the necessity of establishing a separate audit, risk and remuneration committees, the provisions following on that section appear contradictory in that motivation to and approval from the Registrar is required • due to Income Tax and Companies Act compliance and planning, it is not always practical for insurers within a group	Noted. The Insurance Acts have since their enactment in 1998 amplified the framework provided by the Companies Act. Certain requirements have also been amplified to align with international standards. Specifically, the powers of the Registrar that have been introduced with respect to governance requirements are consistent with international standards as contained in the IAIS ICPs. Additional governance requirements have been added with the explicit intention of strengthening policyholder protection – in particular, ensuring that shareholder interests

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			structure to separate functions especially if the functions are done at group level Small to medium insurers especially those who are part of Group company arrangement often have shared arrangements at holding company level facilitating compliance with those requirements and such shared arrangements are set out in the insurer's outsourcing provisions. Compelling small to medium insurers to now have separate arrangements and have independent directors sitting on those committees requirement for establishment insurer specific and separate audit and risk committee. • Separate audit & risk committees for small insurers should not be required • Separation of functions for insurers within group structures should not be required • Any proposed governance, risk management and internal control mechanisms should be consistent with the governance framework applicable to SA companies as per King III and the Companies Act and must further take into account FAIS regulatory requirements for the licence under which the insurer may operate • Combining heads of control functions where this does not give rise to obvious conflict of interest should be allowed • Where functions are outsourced to the Group, there should be no requirement for outsourcing agreements • FSB must formal guidelines for the use of group resources in the governance of insurers who are group member companies and share resources within such group arrangements and such guidelines to take into account the Companies and Income Tax Act provisions on such group arrangements.	are sufficiently balanced by an explicit consideration of policyholder interests. However, amendments have been proposed to certain provisions of the ILAB to allow for more flexibility and to better provide for proportionality. The governance framework may be outsourced within the group; where it or aspects thereof are outsourced the insurer must still be able to oversee the proper performance of outsourced activities. The insurer should furthermore apply the same due diligence in adopting group structures and / or individuals as it would if it was not intending to utilise group resources.
103.	Regent	14C of LTIA & STIA	To the extent that the holding company has existing structures in place (specifically with reference to remuneration committees) we submit that little purpose can be served by duplicating those structures at Insurer level.	Noted. The "comply or motivate" provision will accommodate same unless the Registrar is of the opinion that a separate risk committee or separate remuneration committee must be established to ensure the prudent management of the insurance business and

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				protection of the interests of policyholders.
104.	Real People Assurance Company Limited	14C(1) & (2) of LTIA & STIA	It is submitted that where insurers or specifically smaller insurers have a risk committee and/ or a remuneration committee at group level, such an insurer should not be required to have a risk committee or remuneration committee. Such an insurer should also not be required to notify and motivate the non-establishment of that separate committee to the registrar as is required in terms of the proposed Section 14C(1). It is also submitted that such an insurer should not be required to disclose and motivate the non-establishment of that separate committee together with the insurer's annual financial statements as in the proposed section 14C(2)(b).	Noted. The "comply or motivate" provision will accommodate same unless the Registrar is of the opinion that a separate risk committee or separate remuneration committee must be established to ensure the prudent management of the insurance business and protection of the interests of policyholders. Transparency and disclosure of the governance framework of the insurer supports good governance.
105.	eThekwini Municipality	14C(2) of LTIA & STIA	The word 'for' must be inserted before the words 'the non-establishment'. It is submitted that the word 'elect' be used in place of the word 'elects'.	Disagree. The wording is clear. Disagree. The Board of directors requires the use of the singular verb.
106.	Lion of Africa	14C(3) of LTIA & STIA	The specific responsibilities of the risk and remuneration committees should be prescribed in the Act or regulations to follow, to allow for consistent application.	Noted. See section 14C(3) and the definition of "prescribe" in this regard.
107.	Mike Ilsley Independent	14C(4) of LTIA & STIA	Subsection14C(4) provides that if the insurer decides not to establish a separate risk committee or separate remuneration committee, then the functions of these committees must be performed by the audit committee or another committee as approved by the Registrar. In my view, it would be inappropriate to permit the risk and remuneration committee functions to be integrated with the audit committee function. The audit committee has a crucial oversight responsibility in relation to the assurance activities conducted in respect of the company's risk and controls systems, and cannot exercise oversight over itself. In addition, remuneration drives executive behaviour, and consequently should be dealt with either by the full board itself, or delegated to a separate, properly constituted and focused remuneration committee. In addition, I respectfully suggest that consideration be given to strengthening the independent governance of insurers by requiring: The establishment of a separate board risk committee (owing to the crucial importance of the risk function in any insurance company environment and its increased importance in the more complex post-SAM environment); and Independent	Noted. The current provision allows for proportionality. The Registrar has the power to require a separate risk committee or separate remuneration committee if the Registrar is of the opinion that a separate risk committee or separate remuneration committee must be established to ensure the prudent management of the insurance business and protection of the interests of policyholders.

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			director representation on the risk committee and any separately constituted remuneration committee (in the case of the risk committee, this could be done by requiring audit committee representation on the committee, which will have the additional benefit of ensuring the free flow of any risk issues to the audit committee).	
108.	Mike Ilsley Independent	14D of LTIA & STIA	Subsection 14D(8) of the ILAB states that "Subsections (2), (3), (4) and (5) of section 94 of the Companies Act does not apply to the appointment of an audit committee by a short-term insurer and subsections 14D(1) to (6) then provide for both reduced and increased requirements regarding the appointment of an audit committee. While I agree with the proposed introduction of increased governance requirements for insurance companies, it cannot be correct to override the Companies Act provisions by legislating reduced governance requirements for insurance companies. In my mind, this creates unnecessary conflict between the Insurance and Companies Acts and has the detrimental effect of undermining the effectiveness of the Companies Act (and may even raise interesting legal challenges as to the effectiveness thereof). In addition, in my view, certain of the subsections of section 14D detract from, rather than add to, the rigor of the governance requirements for insurance companies. Subsections (1) to (3) provide for the board to appoint three of its members to serve on its audit committee, the majority of which cannot be group employees and none of which can be employees of the company, whereas the Companies Act requires the audit committee to be elected by shareholders and to comprise at least three members (S94(2)), which members must be directors who meet specified independence criteria (S94(4)). These Companies Act independence criteria preclude the appointment of a group employee to the audit committee as contemplated under subsection (3) of the ILAB. In my view, it is critical to preserve the companies Act requirement for a wholly independent audit committee. Note that this does not preclude group non-executives from attending audit committee meetings as standing invitees, but the independent directors should have the established right to request such attendees to step out of the meeting during any deliberations of intragroup risks or issues (this can be a particular tension within large financial groups). Furthermore, election by the shareholders establishes an appropriate dual reporting role whereby the audit committee reports both to the board (under its delegated authority from the board) and separately directly to shareholders (under its statutory duty to shareholders established	Noted. The provision will be amended to align fully with the Companies Act provisions, save for – · That the provision of the Companies Act that an audit committee need not be appointed if the insurer is a subsidiary of another company that has an audit committee and that audit committee will perform the audit committee functions on behalf of the insurer does not apply; · That the chairperson of the board of directors of the insurer or its holding company (or a lead independent non-executive) may not be appointed as a member of the audit committee; · That the Registrar may grant exemption from the need to have an audit committee; and · That the Registrar may prescribe additional duties to be performed by the audit committee. 

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			under the Companies Act). In the absence of this dual reporting role, the audit committee's reporting obligations under S94(7) of the Companies Act may be stifled by the board and the shareholders' right to information could be subordinated by the audit committee member's fiduciary responsibilities as a director of that company. Finally, it would seem inappropriate for the insurance legislation to limit the audit committee membership to three directors when the Companies Act permits, and individual company circumstances may dictate, an expanded membership. I respectfully submit that subsections (1) to (3) of section 14D be removed from the amending legislation and that audit committee members be subject to both the independence criteria stipulated in section 94 (4) of the Companies Act and any additional independence criteria included in the insurance legislation or subsequently prescribed thereunder (refer point 3 below for related commentary).	
109.	ASISA	14D(2) & (3) of LTIA	(2) All the members of the audit committee must be persons who are not employees of the long-term insurer. (3) The majority of the audit committee may not be employees of any related party of the long-term insurer. It is understood that SAM Discussion Document 71 reflects a different recommendation. It states that the majority of the members of the audit committee must be persons who are not employees of the insurer or any of its related parties. (I.e. independent, non-executive directors.) ASISA members support the recommendation in the Discussion Document and suggest that it be included in the Bill.	See comment above.
110.	Regent	14D(2) of LTIA & STIA	The Companies Act already provides guidance on the composition of the audit committee. No reasons are put forward as to why it is necessary to deviate from the requirements set out in the Companies Act in relation to board committees. In the absence of sound reasons for such deviation it is submitted that the Companies Act should apply and that this section should be amended accordingly.	See comment above.
111.	Lion of Africa	14D(2) of LTIA & STIA	The requirements insofar as the composition of an Audit Committee needs to at a minimum be aligned with section 94 of the Companies Act.	See comment above.

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112.	Oasis Crescent Insurance Ltd	14D(2) of LTIA	The audit committee should have, as a minimum, one executive director as a member of the committee. The reason for this is that an executive director can add valuable insight into the day-to-day operations of the insurer. An executive director will also be in a better position to identify weaknesses in the control system. This will go a long way in assisting the committee to fulfil its functions.	See comment above.
113.	Alexander Forbes Life	14D(2) of LTIA & STIA	The requirement in Section 14(D)(2) stipulates that "all the members of the audit committee must be persons who are not employees of the long term insurer" – This is not in line with the principle of proportionality that the ILAB makes provision for in previous sections around board composition and governance where phrases such as 'sufficient number of individuals' and 'appropriate mix of individuals' are being used. Not clear whether the requirement for independence is for compliance with King III however, the requirement will not be practical or necessarily fit into the size and complexity of some small to medium long term insurers who are likely to have small boards.	See comment above.
114.	IRBA	14D(4) of LTIA & STIA	The chairperson of the board of directors of the long-term/ short-term insurer or its holding company may not be appointed as a member of the audit committee. The IRBA suggests that the appointment as the chairperson be included as well as provided for in King III Code of Corporate Governance, paragraph to read as follows: "The chairperson of the board of directors of the long-term/ short term insurer or its holding company may not be appointed <u>as the chairperson or</u> as a member of the audit committee."	Noted. The Chairperson of the audit committee is a member of the audit committee. As the chairperson of the board cannot be a member of the audit committee it is therefore clear that he/she cannot be appointed the chairperson of the audit committee. However, the wording of this section will be reconsidered to ensure that the intent thereof is clearly and correctly reflected.
115.	Mike Ilsley Independent	14D(4) of LTIA & STIA	Subsection (4) provides that the chairperson of the board of directors of the insurer or its holding company may not be appointed as a member of the audit committee. In my view, this requirement is appropriate and should be retained in the amending legislation.	See comment above.
116.	Mike Ilsley Independent	14D(5) of LTIA & STIA	Subsection (5) provides that the chairperson of the audit committee may not be an employee of any related party of the short-term	See comment above.

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			insurer. This becomes obsolete if the suggested changes above are accepted.	
117.	Mike Ilsley Independent	14D(6) of LTIA & STIA	Subsection (6) provides that the registrar may exempt the insurer concerned from the requirements of subsection (1), (3) or (4). The references to subsection (1) and (3) become obsolete if my suggested changes are accepted. In my view, there may be circumstances in which it is appropriate for the Registrar to exempt particular insurers from the additional requirement imposed by subsection (4) (for example, in the case of small insurance companies where the Registrar is satisfied that the number of independent directors can be limited to three, suitable qualified individuals) and therefore, the amending legislation should retain the right of the registrar to exempt particular insurers from the additional requirement imposed by subsection (4) .	See comment above.
118.	Lion of Africa	14D(7) of LTIA & STIA	We require precise clarity on the basis that short term insurers are excluded from having to comply with the provisions contained with Section 94, subsection 2, 3, 4, 5 of the Companies Act, i.e. appointing an Audit Committee? Due cognisance must be taken to Chapter 3 of the Companies Act as well as section 7- Purpose of the Companies Act.	See comment above.
119.	Mike Ilsley Independent	14D(7) of LTIA & STIA	Subsection (7) provides that subsections (2), (3) (4) and (5) of section 94 of the Companies Act do not apply to the appointment of an audit committee by an insurer. In my view, this is inappropriate for the reasons provided for above. Accordingly I respectfully suggest that this subsection be removed from the amending legislation.	See comment above.
120.	Mike Ilsley Independent	14D(8) of LTIA & STIA	Subsection (8) provides that the audit committee, in addition to the functions referred to in section 94 (7) of the Companies Act, must perform the functions as may be prescribed by the Registrar. While I agree that the Registrar should have the right to impose additional functions on the audit committee, I would respectfully suggest that provision should be made in the amending legislation for appropriate consultation before the imposition of any such additional responsibilities (in order to avoid the imposition of unrealistic responsibilities on the audit committee and the consequent potential for unfulfilled regulatory expectations). Alternatively, these additional functions could be specified from the outset in the amending legislation (after consultation with incumbent independent members of audit committees of insurance	See comment above.

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			companies).	
121.	ASISA	14E(b) & (c) of LTIA	Each director of a long-term insurer, in addition to the requirements of the Companies Act, must— (b) act in the best interests of the long-term insurer and policyholders, putting the interests of the long-term insurer and policyholders ahead of that director's own interests; and (c) exercise independent judgment and objectivity in decision making, taking into account the interests of the long-term insurer and policyholders. ASISA members acknowledge the balancing of the interests of the long-term insurer and those of the policyholders.	Noted.
122.	Regent	14F(2)(a) & (h) of LTIA & STIA	Suggest that reference to "stakeholders" is deleted - this concept is already covered in the Company's obligations in terms of the Companies Act and as the term may be overly broad used in this context we suggest that it be deleted.	Agreed with respect to 14F(2)(a), as this the reference to "stakeholders" is adequately covered in the Companies Act. Disagree with respect to 14F(2)(h) as the intention is to require specific disclosures (including to stakeholders) in the insurance legislation. 
123.	Lion of Africa	14F(2)(c) of LTIA	Specific reference is made to "dismissal" of senior management. We submit that this aspect is more appropriately dealt with in South African labour legislation, such as the Basic Conditions of Employment Act and/or the Labour Relations Act.	Noted. The policies and procedures referred to must take into account applicable Labour legislation.
124.	ASISA	14F(2)(h) of LTIA	The board of directors of a long-term insurer must— (h) have systems and controls to ensure the promotion of appropriate, timely and effective communications with the Registrar and relevant stakeholders on the governance of the long-term insurer, which will allow the latter to make informed judgments[~~to be made~~] about the effectiveness of the board of directors and	Agreed. 

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			senior management in governing the long-term insurer; Grammatical error.	
125.	SAIA	14F(2)(h) of STIA	have systems and controls to ensure the promotion of appropriate, timely and effective communications with the Registrar and relevant stakeholders on the governance of the short-term insurer, which will allow the latter to make informed judgments to be made about the effectiveness of the board of directors It is proposed that the words “To be made” should be deleted as it appears to be an error.	Agreed. 
126.	Lion of Africa	14F(2)(h) of LTIA & STIA	Which parties are being referred to in “the latter”? The Registrar or relevant stakeholders? The section is ambiguous.	It refers to both the stakeholders and the Registrar. An amendment will be proposed to clarify the intent of the provision. 
127.	Regent	14F(2)(h) of LTIA & STIA	Delete “to be made” from the fourth line - typo.	See comment 124 above.
128.	Lion of Africa	14F(2)(i)(i) of LTIA & STIA	“Day to day” should be omitted.	Disagree. The paragraph provides for policies and procedures necessary to oversee that senior management carries out the “day to day” operations of the insurer.
129.	SAIA	14F(2)(j) of STIA	regularly monitor and evaluate the adequacy and effectiveness of the short-term insurer’s governance framework; and Comment: The members of the SAIA kindly request clarity regarding the meaning of “regularly”	The insurer must apply its mind as to what is reasonable. Regular may refer to annually or a different period based on the judgement of the insurer.
130.	Alexander Forbes Life	14F(3) of LTIA & STIA	How different is this to an employee carrying on their duties as per their contract of employment. This additional layer of formally delegating duties to an employee appears to be a duplication and will create unnecessary admin complications as insurers will have to compile delegation documents to employees iro of all functions that the insurer can only carry out through its employees. It is accepted that where a third party carries out functions on behalf of	Disagree. Delegation of responsibilities and decision making should be formalised in addition to conditions of employment.

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			an insurer that proper outsourcing agreements be in place. Also the concern with the section is that Delegation Rules ordinarily only allow for the delegation and not the process segregation of duties is not always possible. Remove the requirement for compliance by the insurer of delegation requirements iro employees of the insurer as they are merely carrying out their employment duties.	
131.	Lion of Africa	14F(3)(c)(ii) of LTIA & STIA	"deemed" created too broad an application. The proposed requirement should be aligned with the responsibilities of the Board under the Companies Act.	Disagree. Where the Board has delegated responsibility or decision making it remains accountable for the performance of those responsibilities and decisions.
132.	eThekwini Municipality	14G(1)(c) of LTIA	This refers to the words "(including, where appropriate, models)". It is submitted that the use of words in brackets should only be used to refer to specific sections. It is submitted that the use of provisions in brackets such as here be avoided, so as to not create uncertainty.	Disagree. The use of brackets is consistent with modern drafting techniques and provides for further clarity in respect of the scope of the provision.
133.	ASISA	14G(3)(a) of LTIA	The risk management system must, at least, include – (a) a clearly defined and documented risk management strategy that includes the risk management objectives, risk management principles and approach to assumption setting, and assignment of risk management responsibilities across all the activities of the long-term insurer, consistent with the long-term insurer's overall business strategy; The reference to the approach to assumption setting will cause confusion. For example, does it refer to assumptions in respect of budgets, technical provisions or actuarial assumptions? It is suggested that the intention of including a reference to assumption setting be clarified to improve understanding and legal certainty.	Agreed. Assumption setting is seen as part of risk measurement, which is one of the risk management principles. Therefor "and approach to assumption setting," will be removed 
134.	SAIA	14G(3)(a) of STIA	(3) The risk management system must, at least, include— (a) a clearly defined and documented risk management strategy **that includes the risk management objectives, risk management principles and approach to assumption setting, and assignment of risk management responsibilities** across all the activities of the short-term insurer, consistent with the short-term insurer's overall business strategy;	Disagree. These elements are important to be included in the strategy, subject to the proposed amendment directly above. This provision is also consistent with the ICPs. However, assumption setting is seen as part of risk measurement, which is one of the risk management principles. Therefor "and approach to assumption setting," will be removed.

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			The SAIA recommends removing the bold underlined section to not only ensure simplicity but also completeness.	
135.	SAIA	14H of STIA	• Is it expected that separate policies be drafted and incorporated into the risk management policy? • Can the policies listed in section 14(H) be consolidated as opposed to having six separate sub policies? • What is meant by the word "explicit" within the context of this section? Rephrase as follows: "The risk management policies must incorporate, where appropriate",… Delete the reference to "explicit" under (a)-(f).	Noted. It is the intention to require separate policies that addresses specific matters. An amendment will be proposed to clarify that separate policies are required (save for the investment and asset-liability management policy). An amendment will be proposed to facilitate the combining of the investment and asset-liability management policy as these policies or matters are closely related. 
136.	ASISA	14H(1)(b) of LTIA	A long-term insurer must develop and regularly review adequate written risk management policies that include— (a) a definition and categorisation of the material risks to which the long-term insurer is exposed, taking into account the nature, scope, and time horizon of the long-term insurance business; and (b) <u>where applicable</u>, the levels of acceptable risk limits for each type of risk. In practice risk limits are not always specified for each risk type e.g. risk types that are not material which are stable or controlled through the risk management process. In these cases the effectiveness of the controls are considered rather than quantifying a risk limit e.g. operational and reputational risk. It is thus suggested that —where applicable‖ be inserted in clause (1)(b) to provide for a qualitative measure as opposed to a quantitative measure where it is applicable.	Disagree. Risk limits may be qualitative or quantitative. Further, the requirements explicitly apply to material risks. An amendment will be proposed to clarify that "the levels of acceptable risk limits for each type of risk" refers to those defined and categorised under 14H(1)(a). 
137.	ASISA	14H(2)(a) & (b) of LTIA	The risk management policies must incorporate— (a) an explicit asset-liability management policy that— (i) clearly specifies the nature, role and extent of the insurer's asset liability management activities and their relationship with product	Agreed. An amendment will be proposed to facilitate same. 

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			development, pricing functions and investment management; and (ii) includes the matters as may be prescribed; (b) an explicit investment policy, that— (i) provides for the investment of all the long-term insurer's assets in accordance with this Act; (ii) specifies the nature, role and extent of the long-term insurer's investment activities and how the long-term insurer complies with the regulatory investment requirements as may be prescribed by the Registrar; (iii) establishes explicit risk management procedures with regard to more complex and less transparent classes of asset and investment in markets or instruments that are subject to less governance or regulation; and (iv) includes the matters as may be prescribed by the Registrar; The current wording of the clause creates the impression that two separate policies are required, one for asset-liability matching and one for investments. These policies are closely inter-related and in many cases not crafted separately. ASISA members will appreciate an indication of whether the intention was to ensure that two separate exist or that one policy incorporating both aspects will be acceptable.	
138.	ASISA	14H(2)(c)(ii) of LTIA	The risk management policies must incorporate— (c) an explicit reinsurance and other forms of risk transfer policy that— (ii) ensures transparent reinsurance arrangements and[~~associated risks~~] other risk transfer arrangements that enable the Registrar to understand the economic impact of reinsurance and other forms of risk transfer arrangements in place; What is meant with ―associated risks? In the context of the clause, it appears to be a reference to other risk transfer arrangements and ASISA members thus suggest that ―associated risks‖ should be replaced with ―other risk transfer arrangements.	Agreed. An amendment will be proposed to facilitate same. An additional amendment will also be proposed to refer to the risks associated with reinsurance and other risk transfer arrangements, for example counterparty default risk. 

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139.	SAIA	14H(2)(b)(ii) of STIA	specifies the nature, role and extent of the short-term insurer's investment activities **and how the short-term insurer complies with the regulatory investment requirements as may be prescribed** by the Registrar; The SAIA recommends removing the bold italic part as it relates to the functional execution of the Compliance Function and should not be included in a policy, especially taking into account that any changes of regulations by the Registrar will then require the Board of the short-term insurer to amend the exiting policy for what may be normal operational processes.	Disagree. It is important that the policy reflects how the regulatory requirements will be met.
140.	SAIA	14H(2)(c)(iii) of STIA	**provides for processes and procedures for ensuring that the strategies referred to in sub-paragraph (i) are implemented and complied with, and that the short-term insurer has in place appropriate systems and controls over its risk transfer transactions; and** The SAIA recommends removing the bold italic part as it relates to the functional execution of the Compliance Function and should not be included in a policy, especially taking into account that any changes of regulations by the Registrar will then require the Board of the short-term insurer to amend the exiting policy for what may be normal operational processes.	Disagree. It is important that the policy reflects how the strategies will be implemented.
141.	Regent	14H(2)(f)(ii) of LTIA & STIA	Delete "relevant" and replace with "local" - the use of the term relevant is too broad.	Disagree. The requirement applies to all regulatory authorities as defined in section 1.
142.	SAIA	14I(3)(d) of STIA	regular monitoring of <u>all</u> controls to ensure that the totality of controls forms a coherent system and that the internal control system functions as intended, fits within the overall governance framework and complements the risk identification, risk assessment, and risk management activities of the short-term insurer The SAIA strongly recommends the removal of the word "all" as it is neither efficient nor economical for an insurer to monitor all controls as these could equate to hundreds or even thousands of IT systems, people and procedural controls. It is best practice of Internal Auditors and related assurance providers to follow a risk-based approach as the cost associated with the review/audit could	Agreed. An amendment will be proposed to provide more flexibility by referring to "key" controls. 

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			far outweigh the risks and benefits.	
143.	Lion of Africa	14I(3)(d) of LTIA & STIA	We submit that "all controls" should be replaced with "key or material controls".	See comment above.
144.	Real People Assurance Company Limited	14J(1) of LTIA & STIA	It is submitted that (especially in the case of smaller insurers) where control functions exist at group level, insurers should not be required to establish separate control functions as is required in the terms of the proposed section 14 J (1) .	Noted. The outsourcing of a control function is provided for in the Bill. This means that an insurer may outsource a control function to another entity within the group provided that the requirements relating to outsourcing is complied with.
145.	eThekwini Municipality	14J(1) of LTIA & STIA	It is submitted that a colon is used after the word 'functions'. It is submitted that an m-dash is used throughout the Bill to provide for a list, and same should be used for continuity in the Bill.	Disagree. The provision is drafted in a manner consistent with modern drafting techniques.
146.	AIG South Africa Limited	14J(1) of LTIA & STIA	ILAB specifically makes provision, under Section 14J(1)(a) for establishment and maintenance of the following Control Functions: A risk management function; A compliance function; An actuarial control function; and An internal audit function Section 14K(1) further prescribes that an insurer must appoint a head for each of the control functions referred to in Section 14J(1) (a). Sections 14K(1)(c) requires the appointment of the head of the internal audit function. It further prescribes that the appointment, performance assessment, remuneration, disciplining and dismissal of the head of the internal audit function must be done by the board of directors, its chairperson or the audit committee which solely determines his or her remuneration, promotions, demotions or disciplinary actions. In terms of the business model adopted by AIG Inc, the internal audit function of its insurance subsidiaries is outsourced to a Global Internal Audit Division (GIAD). The head of the internal audit function is assigned to each of AIG's subsidiaries by GIAD, which is responsible for the appointment, performance assessment, remuneration, disciplining and dismissal of the head of the internal audit function appointed. If it is the intention of the National Treasury to require the appointment of a local head of internal audit, then it is our position that the requirement is unfeasible having regard to the way in which AIG Internationally, and indeed certain multinationals have structured their internal audit function. A further consideration under the current model is that AIG is not involved in the appointment nor does it determine the remuneration of the head of the internal audit function. To this	Noted. The outsourcing of a control function is provided for in the Bill. This means that an insurer may outsource a control function to another entity within the group provided that the requirements relating to outsourcing is complied with. Where a control function is outsourced within the group, the insurer must still be able to oversee the proper performance of outsourced activities. The insurer should furthermore apply the same due diligence in adopting group structures and / or individuals as it would if it was not intending to utilise group resources.

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			end, we submit that the methodology followed by AIG lends a greater degree of independence to the internal audit function. It is unclear as to what the intent of the National Treasury is and we respectfully request clarity regarding the interpretation of Section 14K(1)(c) , alternatively, for the National Treasury to consider revising the provisions of Section 14K(1)(c) to facilitate the internal audit structures of AIG Inc and other multinationals who have adopted a similar methodology.	
147.	Lion of Africa	14J(2) of LTIA & STIA	Consideration should be given to the proportionality principle insofar as the composition of the control functions.	Noted. The outsourcing of a control function is provided for in the Bill. This means that an insurer may outsource a control function to another entity within the group provided that the requirements relating to outsourcing is complied with. Further, the same person may be the head of more than one control function.
148.	RMB Structured Insurance	14J(1)(d) of LTIA & STIA	▪ The internal audit function does form part of an insurers' risk management strategy. However not all insurers are at the appropriate scale to justify an internal audit division with the required skills and the cost associated for the insurer; ▪ Any sub-scale/or specialist insurer who does not have a separate internal audit division should have the obligation to demonstrate that the appropriate internal controls are in place. Then insurer should then compensate for the absence of an internal audit function by conducting regular audits by staff with the appropriate skills who reports to the risk manager; ▪ The appropriate internal skills would be accounting, legal & compliance and underwriting staff who would conduct these regular audits and the report into a risk manager. A risk manager should be appointed by the board and be a person who does not perform the function of a risk taker in the business as a second line of defence. The reports should include the objective scope and findings and recommendations to the risk committee and the board.	Noted. The requirement to have an internal audit function is required under IAIS ICP 8. The outsourcing of a control function is provided for in the Bill.
149.	Oasis Crescent Insurance Ltd	14J(4)(b) of LTIA	The requirement to have the internal audit function of the insurer reviewed by an objective external reviewer will place strain on the insurer and will result in increased costs. By its very nature the internal audit function is required to be objective. The structure and mandate of the internal audit function makes adequate provision for the internal audit function to be staffed with competent persons	Noted. This requirement is consistent with international standards (including international IIA standards 1310 and 1312) and promotes good governance. The annual review of the internal audit

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			who must remain objective. The internal audit function must report directly to the audit committee and board of directors which means that there is adequate monitoring of the internal audit function on a continuing basis. It is also submitted that the internal audit function is subject to annual review by the external auditors as part of the annual audit of the financial statements and the annual return. The requirement to have the internal audit function reviewed by an external reviewer will only serve to place additional strain and cost on the insurer. The costs will have to be recovered from the policyholders and this will not best interest of the policyholders, which is contrary to the objective of the act. We believe that the requirement to have the internal audit function reviewed by an external reviewer should therefore be removed. At the very least the requirements to have the internal audit function reviewed by an external auditor should be waived where an insurer is in possession of an ISAE3204 report on internal controls from its auditors.	function by the external auditors as part of the annual audit of the financial statements and the annual return could be utilised to support the required assessment.
150.	Lion of Africa	14J(4)(b) of LTIA & STIA	Control functions may be outsourced. If internal audit is outsourced, there should be no need for the function to be reviewed by an objective external reviewer as set out in 14J(4)(b), more especially if the function is outsourced to a reputable external service provider (A “Big 4” Audit firm)	Disagree. This requirement is consistent with international standards and promotes good governance.
151.	eThekwini Municipality	14J(6) of LTIA & STIA	It is submitted that the ‘and’ before the worlds ‘legal and regulatory obligations” be deleted.	Disagree. The construction of the sentence is grammatically correct and consistent with modern drafting techniques.
152.	ASISA	14K(2)(b) of LTIA	A long-term insurer may, where appropriate in light of the nature, scale and complexity of the long-term insurer‘s business, risks, and legal and regulatory obligations— (b) appoint the statutory actuary as the head of the actuarial control function, if that appointment precludes the statutory actuary from conducting any activities for the long-term insurer which would compromise the independence and oversight requirements of the role of the actuarial control function. The current wording of the clause may cause difficulty with interpretation. Is the intention to stipulate that if the statutory actuary is appointed as the head of the actuarial control function; such statutory actuary may not conduct any other activities that	Disagree. Being a member of senior management does not in itself compromise independence. Further, the requirement relates to the independence of the actuarial control function.

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			would compromise the independence of the actuarial control function? This may be difficult from a practical point of view, for example where the statutory actuary is an employee of the company, especially where the statutory actuary is a member of senior management as defined, involved in the strategic and other decision making activities of management.	
153.	Lion of Africa	14K(2) of LTIA & STIA	As regards the practicality of appointing a short term statutory actuary as the head of the actuarial control function, we submit the following: The current circumstances where a statutory actuary would be required by a short term insurer are very limited. For this reason, although it would be preferable for short term insurers to appoint a statutory actuary, there would appear to be very few skilled short term insurance statutory actuaries presently in the market. Further, due to the limited pool of such short term statutory actuaries, the cost of engaging such an actuary for short term insurers currently may be prohibitive. We recommend that a phasing in process be provided for, so as to allow more actuaries to cross practice areas from long term insurance to short term insurance, and for more actuaries to obtain a short term insurance statutory role. As part of a transitional measure, actuaries of a non-statutory and/or non-short term insurance background or calibre should be allowed to head an actuarial control function. Such actuaries could approach the Actuarial Society for a recommendation, to certify the statutory roles they will fulfil in the short term insurance space.	Noted. The subsection does not create an obligation to appoint a statutory actuary. It creates the possibility of appointing the statutory actuary, where one has been appointed as such, also as the head of the actuarial function.
154.	eThekwini Municipality	14K(2) of LTIA & STIA	This refers to the words “in full or in part”. It is submitted that clarification is sought as to what “in full or in part” refers to. Does this refer to permanent or temporary?	Agreed that clarity must be provided. Consideration will be given to redrafting the provision. 
155.	eThekwini Municipality	14K(3) of LTIA	Refers to the words “appoint another”. It is submitted that it is not clear as to who or what must be appointed.	Noted. It relates to a person. This is clear from the construct of the phrase “another or dedicated person”.
156.	SAIA	14K(5)(a) of STIA	Without delay, report in writing to the board of directors any matter relating to the business of the short-term insurer of which he or she becomes aware in the performance of his or her functions and which, in his or her opinion, constitutes a material contravention of any section of this Act or a material contravention of any other	Disagree. All contraventions of the Insurance Acts must be reported to the Board.

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			legislation that applies to the short-term insurer; and The SAIA recommends the insertion of the word 'material' to bring this reporting requirement in line with the rest of the sentence which requires reporting of material contraventions of any other legislation.	
157.	Lion of Africa	14K(5)(a) of LTIA & STIA	To be consistent, the section should read "… constitutes a material contravention of this Act…"	Disagree. Any contravention of the Insurance Acts must be brought to the Registrar's attention.
158.	SAIA	14L of STIA	The Directive refers to "management executive" whereas the Bill replaces it with "senior management". The SAIA has noted that the Bill differs from the Directive in that regulations differ in wording and that certain sections of the Directive are not included in the Bill. Examples are listed below: FROM THE DIRECTIVE: Principles with which any outsourcing must comply 6.2 The outsourcing of any aspect of the insurance business of an insurer must not – 6.2.1 materially impair the quality of the governance framework of the insurer; FROM THE BILL: [PAGE: 38] 14L. (2) As short-term insurer may not outsource any function or activity if that outsourcing may— (b) materially impair the quality of the governance framework of the short-term insurer, including the short-term insurer's ability to manage its risks and meet its legal and regulatory obligations; The text above in bold and italic refers to the difference in wording.	This is correct. This change is necessitated by the new definition of "senior management" that replaced the definition of "management executive" in the current Acts. Example 1: Disagree. The wording is the same. See paragraph 6.2.2 of the Directive and subsection (2)(b) of the Bill Example 2: Disagree. The wording is the same. See paragraph 6.2.4 of the Directive and subsection (2)(d) of the Bill. Example 3: Disagree. The wording is the same. See paragraph 6.3 of the Directive and subsection 14L(4) of the Bill. It appears that the commentator is not working from the Directive as was published on the FSB website.

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			FROM THE DIRECTIVE: Principles with which any outsourcing must comply 6.2 The outsourcing of any aspect of the insurance business of an insurer must not – 6.2.4 undermine continuous, fair and satisfactory service to policyholders; or FROM THE BILL: (d) compromise the fair treatment of or continuous and satisfactory service to policyholders. The text above in bold and italic refers to the difference in wording. FROM THE DIRECTIVE: Principles with which any outsourcing must comply 6.2 The outsourcing of any aspect of the insurance business of an insurer must not – 6.2.5 create potential conflicts of interest in respect of the insurance business of an insurer, the interests of policyholders or the business of the third party that performs the outsourcing. The text above in bold, italic and red refers a section in the Directive not included in the Bill. The above examples have been highlighted for the attention of the drafter. Inconsistency should be addressed as the industry have designed and implemented there outsourcing practices, procedures and policies according to the Directive. These differences should be addressed in order to ensure a smooth transition from the Directive to the Bill.	
159.	Regent	14L of LTIA & STIA	Please confirm whether the intention is for this section to replace the Outsource Directive? To the extent that the requirements set out herein differ in any respect to existing requirements as set out in Directive 159, Insurers must be provided with sufficient time within which to renegotiate these agreements.	Noted. The Directive will be withdrawn once the Bill is enacted and the necessary subordinate legislation has been made. Care has been taken to ensure that this provision and the Directive is aligned.

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160.	Lion of Africa	14L of LTIA & STIA	We have done an assessment of Directive 159A.i. and advise the following: Sections 6.2, 6.3 6.4, 6.5, 8.1, 5.1.3, 5.2.1, 5.2.2, 5.2.3, 6.1, 3.5 and 3.6 are incorporated into 14L OUTSOURCING. However we require precise clarity on the remaining provisions contained in the directive, as these cogent provisions are now applied by insurers. Will these be incorporated into regulations? As an example, it is submitted that not incorporating section 7- Key requirement for outsourcing (in regulations) read with section 14L, will flaw the entire process of responsible outsourcing by insurers, which essentially is the key principle to outsourcing.	Noted. The provisions not accommodated in this section will be provided for in subordinate legislation. See subsection (12) in this regard.
161.	ASISA	14L(1) of LTIA	A long-term insurer that outsources any **[~~function or activity~~]** aspect of its long-term insurance business must have an outsourcing policy that includes the matters as may be prescribed by the Registrar. It is suggested that the wording of this clause be aligned with Directive 159.A.i (LT&ST). The current wording is too wide and may include the outsourcing of functions or activities unrelated to the long-term insurance business e.g. an IT helpdesk or catering function.	Noted. See definition of outsourcing. It refers to the insurance business and therefore negates the need to refer to insurance business here.
162.	SAIA	14L(2)(a) of STIA	Does this imply inherent risk or residual risk?	Noted. It implies both.
163.	ASISA	14L(4) of LTIA	Any remuneration paid in respect of outsourcing must— (a) be reasonable and commensurate with the actual **[function or activity]** aspect of the long-term insurance business being outsourced; (b) not result in any function or activity in respect of which commission or a binder fee is payable being remunerated again; (c) not be structured in a manner that may increase the risk of unfair treatment of policyholders; and (d) not be linked to the monetary value of insurance claims repudiated, paid, not paid or partially paid. Please refer to the comments in clause 7 inserting section 14L(1) into the Act.	Noted. See definition of outsourcing. It refers to the insurance business and therefore negates the need to refer to insurance business here.

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164.	eThekwini Municipality	14L(8) of LTIA & STIA	Refers to the words "(such as termination, material non-performance and the like)". It is submitted that these words create vagueness, especially with the reference to 'and the like' which is open to interpretation. The intention of the provision should be clear and simple.	Disagree. The use of brackets is consistent with modern drafting techniques and provides for further clarity and guidance in respect of the scope of the provision.
165.	Regent	14L(10) of LTIA & STIA	The registrar is granted the power on receipt of a notification of a proposed outsourcing to instruct the Insurer to outsource that function to another party. We submit that this must be reconsidered. To the extent that deficiencies in the outsourcing are noted the Registrar's role should be limited to requiring that these deficiencies are rectified. The responsibility for outsourcing a function must rest with the board. If the registrar intervenes in this then the registrar, must then also accept responsibility for that outsourcing which is obviously undesirable and clearly not the intention if one has regard to the provisions of the ILAB which limits the liability of the registrar.	Note that this provision relates to the outsourcing of a control function only. The authority afforded the Registrar in this regard is appropriate given the significance of the functions performed by control functions. Please note that the ILAB does not limit the Registrar's liability – the Financial Services Board Act does so.
166.	ASISA	14L(12)(a) of LTIA	The Registrar may prescribe— (i) the requirements with which any outsourcing of an aspect of long-term insurance business and remuneration paid in respect of such outsourcing must comply; (ii) the requirements with which a long-term insurer and any person who will perform an outsourced **[function or activity]** aspect of long-term insurance business must comply; (iii) the matters that must be included and addressed in the outsourcing policy referred to under subsection (1); (iv) the matters that must be included or addressed, or may not be included in an outsourcing contract; or (v) the **[functions or activities]** aspects of the long-term insurance business of a long-term insurer that may not be outsourced. Please refer to the comments in clause 7 inserting section 14L(1) into the Act.	Noted. See definition of outsourcing. It refers to the insurance business and therefore negates the need to refer to insurance business here.
167.	Regent	14L(12) of LTIA & STIA	Any guidance around outsourcing must be consistently applied and published. It is submitted that these guidance notes be made available without delay to allow Insurers sufficient time within which	Noted. This subsection does not provide for guidance, but subordinate legislation that must be complied with. The subordinate

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			to align relationships. If different rules are to be applied to different Insurers these need to be published to ensure that there is consistent application of the minimum requirements.	legislation will be published in the Gazette and will be subject to appropriate consultation.
168.	SAIA	16 of STIA	Directive 138.A.i - Public Officer / Management of compliance risk is currently an enforced directive and should either be removed and/or adequately addressed in the ILAB.	Noted. All current Directives and Information Letters are being assessed against the Bill.
169.	Alexander Forbes Life	18(2) of LTIA & STIA	**The duty of directors/ senior person/ head of a control function to report to the Registrar any material irregularities relating to the insurer:** This is essentially a whistle blowing clause. Although we are in support of the new sections and the extension of the duty to whistle blow, the concern is that there is limited protection for the person in that only the information they disclosed may not be used against them in a criminal prosecution. This may cause an occupational detriment as only limited protection is afforded for whistle blowers. Therefore, those that are required to blow the whistle may become reluctant to do so. In an attempt to encourage whistle blowing, we believe that the Bill should amend the LTI Act so as to specifically state that there will be no criminal prosecution of such whistle blower, instead of merely stating that information disclosed will not be used against the person.	Noted. The protection can only extend to the information disclosed. Consideration will be given to redrafting the provision to afford protection against criminal prosecution in respect of information disclosed.
170.	ASISA	18(3) of LTIA	No information furnished by a director [or managing executive], person in senior management or head of a control function in terms of subsection (2) may be used by the Registrar in any subsequent criminal or civil proceedings against such director [or managing executive], person in senior management or head of a control function. Given the inclusion of senior management and the head of the control function, it is suggested that the protection from criminal proceedings be extended to include civil proceedings.	Disagree. This is not consistent with legislative precedent.
171.	IRBA	19(5)(c)(i) of the LTIA & STIA	Inform the Registrar and the board of directors on any matter (including a description of the matter and such other particulars as the auditor considers appropriate) relating to the business of the Long Term/ Short-Term insurer of which the auditor becomes aware of in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, - (i) . constitutes a contravention of section 29 (1) or any other section of this Act or in future may prejudice the insurer's ability to	Noted. The concerns raised relates to the existing provisions of the LTIA and STIA. Auditors have in the past complied with these provisions. It is therefore not clear why this is raised as a challenge. However, consideration will be given to international guidance on the role of the auditor by the Basel Committee and

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			comply with section 29 (1) or any other section of this Act[, which information must give a description of the matter and must include such other particulars as the auditor considers appropriate.]; or (leads on to cell below) Going Concern Considerations Does the FSB expect the auditor to identify such "matters" from the Board of directors' own risk and solvency assessment performed in terms of s27 that refers in s27 (2) to ".an own risk and solvency assessment must encompass all reasonably foreseeable and relevant material risks…"? Section 4 of the Companies Act sets out the requirements for the assessment of the solvency of any company based on the fair value measurement ("FVM") of the assets and liabilities in accordance with the relevant financial reporting framework. The Companies Act solvency requirements are linked however to responsibilities of the directors to respond to the Business Rescue provisions in the Companies Act, 2008. The IAASB Standard on auditing - ISA 570 Going Concern sets out the requirements for the auditor to evaluate the going concern of an entity. The auditor is required to evaluate the following 12 months. The auditor assesses whether the preparation of the financial statements on the going concern basis is appropriate or whether there are any significant uncertainties that lead the auditor to believe the entity will not continue operating in the ordinary course of business for the next 12 months Consequently, the auditor can be expected to exercise professional judgement in this regard and where the auditor becomes aware of such matters that might constitute a contravention of s29 (1) may reasonably be expected to report accordingly. Reporting guidance is provided in this regard on the annual financial statements. Whilst the auditor can be expected to obtain evidence to evaluate the reasonableness of information supporting director's "own solvency assessment" as required by s27, in the course of the audit of FVM in terms of the IFRS, however, the auditor cannot predict that "the company will be financially unsound in the future". Similarly whilst the auditor may be expected to report a contravention of a section of the Act identified in the course of the	international guidance on the interface between the insurer and the external auditor issued by the IAIS, and transitional measures that may be required for the effective implementation of this requirement. 

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			audit of the financial statements, the auditor cannot predict contraventions that "might occur in future".	
172.	IRBA	19(5)(c)(ii) of the LTIA & STIA	(ii) may be contrary to principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls. The term "principles of sound management" needs clarification as it is a subjective term. Presumably the section intends to refer to an expectation that the auditor's assessment of whether the directors have met their responsibilities in terms of sections 28 to 30 and 32. Does the FSB expect that the principles of sound management intend to refer to content of the Discussion Papers being developed by the SAM Working Group dealing with corporate governance, risk management and internal controls will provide an appropriate framework for auditors to when undertaking an objective evaluation of controls implemented by an insurance company? The auditor evaluates internal controls in the course of the audit and where reliance is intended -tests those controls, for the purpose of reporting on the financial statements and not for reporting on the controls themselves. Ordinarily weaknesses in internal controls identified in the course of the audit of the financial statements would be included in a "management report' to those charged with governance. The Companies Act requires public companies, including insurance companies, to contain both a director's report and an audit committees report in their annual financial statements. The audit committee is, inter alia expected to express a view on the effectiveness of the internal controls. Whilst s14D provides for the appointment of an audit committee it does not specify its roles and responsibilities. Is it to be assumed that the Companies Act requirements apply? While the CIPC expects the auditor to have "read these reports" to identify any inconsistencies with the audited financial statements. The SA auditor`s report on a company will, includes an "other matters" paragraph to deal with these other reports in the annual report of the company. This does not however, amount to assurance provided by the auditor on the effectiveness on internal controls expressed in the audit committees' report.	Noted. As to the functions of the audit committee: The functions are the same as per the Companies Act, but the Registrar may prescribe additional requirements. As to the lack of a framework for sound risk management: It is our view that the governance requirements set out in the Bill (for LT and ST) and best practice (King III) provide an appropriate framework in this regard. This approach is also consistent with the approach under the Banks Act. An amendment will be proposed to clarify that the requirement refers to the governance framework requirements of the Insurance Acts by replacing the words "principles of sound management" with "the governance framework requirements of this Act". 

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			By retaining this requirement in the legislation, the registered auditor`s report will be the same as in the case of the pension fund and medical aid reports, e.g. the registered auditor report basically says that "Currently no framework for evaluating the effectiveness over the administrator's control procedures exists, as each administrator's controls are designed and operates differently. We are therefore not permitted to express an opinion on the controls of XXX Limited over the administration of retirement funds." A similar position may pertain to insurance companies if this section is retained in the legislation.	
173.	ASISA	19(5)(c)(ii)	Notwithstanding anything to the contrary in any law contained, the auditor of the long-term insurer shall – (c) inform the Registrar and the board of directors of the long-term insurer, without delay, in writing of any matter (including a description of the matter and such other particulars as the auditor considers appropriate) relating to the business of the long-term insurer of which the auditor becomes aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor – (ii) may be contrary to the principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls. It should be noted that auditors require a framework and criteria against which to audit and will require such framework and criteria in respect of the —principles of sound management‖. The Independent Regulatory Board for Auditors should be consulted in this respect.	See comments 169 and 170 above.
174.	Ernst & Young Incorporated	19	Our comments do not reflect the opinion of EY and are only for the consideration by yourselves in the drafting of the ILAB. Our comments are solely for the purpose as set out in the first paragraph and for your information, and are not be used for any other purpose. We make no representation as to the sufficiency of our comments. Our comments, as submitted to ASISA, are mainly addressed towards the auditing implications of applying ILAB. We highlight below our most significant item of feedback which relates to the proposed Section 19 amendment: The proposed Section 19 amendment requires the auditor to formulate an opinion on an insurer's "principles of sound management (including risk	See comments 169 and 170 above.

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			management)" and "maintenance of internal controls". Auditors, as a profession, are required to have a framework and criteria against which to audit. This is a requirement of the profession as set down by our Regulator. Before auditors would be able to determine whether principles of sound management (including risk management) or adequate maintenance of internal controls has been achieved (or not), such conclusion would need to be evaluated against the set framework and criteria. It is thus necessary for such framework and criteria to be developed, and to be in line with auditing standards. We have also suggested that IRBA should be consulted in this regards. Specifically, IRBA should give comments around the framework auditors would be expected to follow in determining "principles of sound management". Auditors cannot accept engagements in terms of the Professional Standards if the criteria are not suitable. In addition, auditors do not have a framework to give an opinion on the future state of the company (clause 5 (c) (i)). Consideration should also be given to whether Section 19 amendments potentially embody the auditor's reporting responsibilities under Section 45 of the Auditing Professions Act ("APA").	
175.	PWC	19	In principle, we welcome the interim measures relating to the governance, risk management and internal controls of insurers, as well as insurance group supervision. We also have a concern that currently there is no framework for evaluating the principles of sound management (including risk management) or the maintenance of internal controls, as each insurer's risk management or internal controls are designed and operate differently. We are therefore not permitted to express an opinion on the sound management and adequate maintenance of internal controls. The proposed amendment will require the auditor of an insurer to report to the Registrar and board of directors of the insurer, in writing, of any matter relating to the business of the insurer of which the auditor becomes aware in the performance of the auditor's functions as auditor and which, in the opinion of the auditor, may be contrary to principles of sound management (including risk management) or amounts to inadequate maintenance of internal controls. The audit of annual financial statements is performed in terms of International Standards on Auditing with the view of expressing an opinion on whether the annual financial statements fairly present the financial position,	See comments 169 and 170 above.

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			performance and cash flows in accordance with International Financial Reporting Standards and the Companies Act. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgement. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. (emphasis added)	
176.	SAIA	21(1)(a) of STIA	If the Registrar is of the opinion that the a director, person in senior management, head of a control function, public officer, auditor or statutory actuary does not meet the fit and proper requirements or any other requirements of this Act, the Registrar may instruct the short-term insurer to remove that director from its board of directors, or to terminate the appointment of that person in senior management, head of a control function, public officer, auditor or statutory actuary. This section refers to the "opinion" of the Registrar on the fit and proper requirement of an appointee, and creates the impression of subjectivity. The right of the Registrar to instruct the short term insurer to remove an appointee infringes on the right to fair labour practice as entrenched in Section 27 of the Constitution of South Africa, 1996 as amended and the Labour Relations Act, 1995 as amended. It is suggested that provision be made for an arbitration process prior to the removal of an appointee, in order for the Bill to not be contrary to existing labour legislation (similar to section 60(6)(a) of the Banks Act 94 of 1990 which requires the Regulator to notify the person concerned, the chairperson of the board and the CEO. These notified parties are entitled to submit written representations to the Registrar. The Registrar must give notice to the parties of his or her decision after receiving any written representations. If the Registrar maintains the view that the appointment should be terminated, or if no written representation is submitted to the Registrar, the Registrar must refer the matter for arbitration.)	Please note that PAJA will apply to any decision of the Register under this section which will allow for fair administrative procedures to apply. Also see section 3(3) of the Insurance Acts that provide for a general right to appeal in respect of all decisions of the Registrar under the Acts. Please note that the provision provides for the removal from or termination of an appointment and obliges the insurer to ensure that the persons does not involve him/herself with the oversight, management or control functions of the insurer. The provision does not require termination of any employee-employer relationship. A person may remain in the employment of the insurer, but may no longer perform the functions associated with the relevant appointment.
177.	SAIA	21(1)(b) of STIA	(b) If the Registrar instructs the short-term insurer to remove a director from its board of directors, or to terminate the appointment of that person in senior management or head of a control function,	See comment above.

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			public officer, auditor or statutory actuary, the short-term insurer must do so within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the oversight, management or control functions of the short-term insurer. The SAIA recommends enhancing the current provisions to allow for an arbitration procedure whereby the insurer and the regulator engage in discussion regarding the proposed termination in order to seek alternatives and/or corrective actions. Also see the comments above regarding Section 21(1)(a).	
178.	ASISA	22 of LTIA	(1)(a) If the Registrar is of the opinion that a director, person in senior management, head of a control function, public officer, auditor or statutory actuary does not meet the fit and proper requirements or any other requirements of this Act, the Registrar may instruct the long-term insurer to remove that director from its board of directors, or to terminate the appointment of that person in senior management, head of a control function, public officer, auditor or statutory actuary. (b) If the Registrar instructs the long-term insurer to remove a director from its board of directors, or to terminate the appointment of that person in senior management or head of a control function, public officer, auditor or statutory actuary, the long-term insurer must do so within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the oversight, management or control functions of the long-term insurer. (2) Despite anything to the contrary in any law or in any agreement, the appointment by a long-term insurer of a director, person in senior management, head of a control function, public officer, auditor or statutory actuary is subject to the condition that the appointment may be terminated under paragraph (b) and the long-term insurer must make any appointment subject to this condition. ASISA members acknowledge that the Promotion of Administrative Justice Act, 2000, was enacted after the existing section 22 of the Long-term Insurance Act but do not agree with the removal of the provisions requiring the Registrar to follow due process when	Noted. Please see section 3(3) of the Insurance Acts that provide for a general right to appeal in respect of all decisions of the Registrar under the Acts. The reference to the right to appeal in section 26 is an anomaly and creates legal uncertainty as not every other provision in the Acts that allows for administrative decisions has a similar reference.

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			instructing a long-term insurer to remove appointees, i.e. to inform the long-term insurer of the intention to remove an appointee, providing reasons for such action, providing the opportunity to respond to such intention, the right to appeal the decision to the FSB Appeal Board and thereafter the right to appeal to the Court against a decision of the FSB Appeal Board. It can be argued that the right to the appeal to the FSB Appeal Board (in terms of section 26 of the Financial Services Board Act) will be expressly removed by the proposed amendment of section 22 of the Act by this clause in the Bill otherwise the legislature would have expressly retained that right. An alternative interpretation could be that section 26(1) of the Financial Services Board Act automatically provides a right of appeal to the FSB Appeal Board. In light of these two possible interpretations and for the sake of legal clarity and certainty, ASISA members are of the opinion that the right of an appeal to the FSB Appeal Board should not be removed from section 22 of the Long-term Insurance Act. It is noted that section 22(2)(2) provides for the Registrar to be able to terminate appointments despite anything in any law or any agreement. This underscores the crucial importance of due process to be followed in respect of the removal of appointees.	
179.	IRBA	22(1)(a) of LTIA & 21(1)(a) of STIA	If the Registrar is of the opinion that a director, person in senior management, head of a control function, public officer, auditor or statutory actuary does not meet the fit and proper requirements or any other requirements of this Act, the Registrar may instruct the long-term/ short term insurer to remove that director from its board of directors, or to terminate the appointment of that person in senior management, head of a control function, public officer, auditor or statutory actuary The IRBA notes that the definition of fit and proper requirements in section 1 (c) of the Amendment Bill does not clearly define the criteria for “fit and proper” nor is it clear how this could be applied to auditors in the context of a “control function” of the entity as the auditor does not and cannot have a management function that requires the auditor to “control” the entity. Nor can the auditor’s responsibilities be regarded in the same light as those of: “a director, person in senior management, head of a control function, public officer, or statutory actuary” The inclusion of the “auditor” in this section is a problem. The fit and proper requirements for a director, senior manager and head	Noted. The definition of fit and proper will be deleted from the Bill. The definition as provided for in the FSLGAB will remain, which definition is more general than that proposed in the ILAB. Draft subordinate legislation in respect of what constitutes “fit and proper” requirements will be made available as soon as possible and will be subject to consultation with interested and affected parties. Further, section 22 of the Long-term Insurance Act and section 21 of the Short-term Insurance Act currently provide the Registrar with the ability to require the removal of the auditor. This approach is also not inconsistent with that adopted under the Banks Act. Note that the external auditor is not a control function – it is internal audit that is a control

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			of a control function will be significantly different from the responsibilities of an auditor. Due process must be followed for the appointment or removal of an auditor in terms of the Companies Act. We recommend that reference to an "auditor" in the context of this section be removed. There is nothing to preclude the FSB from determining accreditation requirements for the appointment, or removal, of an individual auditor, or audit firm, responsible for the audit of an insurance company, that requires specific industry knowledge and competencies for such engagements. There is also nothing to prevent the FSB from reporting an auditor to the IRBA for investigation for improper conduct, as it is the responsibility of the IRBA to determine whether the auditor is competent or not. All registered auditors are expected to comply with the IRBA Code of Professional Conduct for Registered Auditors and may be charged for contraventions in accordance with the IRBA Rules Regarding Improper Conduct. In terms of the Auditing Profession Act, 2005 (Act 26 of 2005) (The Act), an individual intending to apply for registration as a registered auditor must comply with stringent requirements prior to registration. One of the registration requirements as stated in section 37 (2) (d) of the Act is that the individual "is a fit and proper person to practice the profession". Once registered the registered auditor is required to continually maintain professional knowledge and skills at the level required to ensure that clients receive competent professional service; and to act diligently in accordance with applicable technical and professional standards when providing professional services.	function. Extending of the above requirement that relates to the audit firm to audit partners will be considered. 
180.	Oasis Crescent Insurance Ltd	22(1)(a) of LTIA	The constitutionality of this section is questionable. The way that the proposed section is currently worded it gives the Registrar the right to terminate someone's employment without conducting an investigation or gathering representations from the person involved. It is submitted that the proposed section should be reworded to give the Registrar the power, following consultation with and representations by the Insurer, to require the insurer to remove the relevant person from a position as director, senior management or head of a control function and to ensure that that person is not in any way involved in the conducting of the business or affairs of the insurer. The insurer should be given the right to	Noted. The provision provides for the removal from or termination of an appointment and obliges the insurer to ensure that the persons does not involve him/herself with the oversight, management or control functions of the insurer. The provision does not require termination of any employee-employer relationship. A person may remain in the employment of the insurer, but may no longer perform the functions associated with the

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			appeal and to make representations as to why the person should not be removed as a director, senior management or key person in control function. The onus will then be on the insurer to comply with the relevant labour laws in order to terminate the employment relationship.	relevant appointment.
181.	IRBA	22(1)(b) of LTIA & 21(1)(b) of STIA	If the Registrar instructs the long-term/ short-term insurer to remove a director from its board of directors, or to terminate the appointment of that person in senior management or head of a control function, public officer, auditor or statutory actuary, the long-term / short-term insurer must do so within a period of 14 days and must ensure that the person in question does not in any way, whether directly or indirectly, concern himself or herself with or take part in the oversight, management or control functions of the long-term short-term insurer. Refer to our comments on the preceding section. The auditor cannot assume a management responsibility as this creates a self-review threat and familiarity threat so significant there are no safeguards sufficient to reduce the threats to an acceptable level. As a result thereof the auditor may not be involved in the oversight, management or control functions of the long-term/ short-term insurer. Consequently reference to an auditor should be deleted from this section.	Noted. This provision will apply to the auditor only to the extent possible. The provision doesn't imply that auditors perform such functions or responsibilities.
182.	Oasis Crescent Insurance Ltd	22(1)(b) of LTIA	This section should be amended to take into account the comment in respect of paragraph 22(1)(a).	See comment 178 above.
183.	Oasis Crescent Insurance Ltd	22(1)(c) of LTIA	This section should be amended to make the appointment of any director, person in senior management, key person in control function or any person involved in the affairs of the insurer subject to that person meeting and complying with the fit and proper requirements of honesty, integrity and competence at all times.	Noted. The section places this responsibility on the insurer. The latter must provide for this in its internal policies and agreements entered into with the persons referred to in this section.

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184.	PWC	22 of LTIA & 21 of STIA	In terms of the proposed substitution the Registrar can instruct an insurer to remove an auditor if the auditor does not meet the fit and proper requirements or any other requirements of the Act. The definitions as set out in section 1 and 20 of the ILAB defines "fit and proper" in respect of directors, senior management, heads of control functions, persons to which controls functions have been outsourced and persons who directly or indirectly controls the insurer. The definition does not however define the "fit and proper" requirements for auditors. We recommend that further detail be provided as to the "fit and proper" requirements for auditors. These requirements should be consistent with those as documented and detailed by bodies regulating auditors such as the Independent Regulatory Board of Auditors.	Noted. This provision will apply to the auditor only to the extent possible. Any requirements to be prescribed will be alignment with those provided for by IRBA.
185.	Lion of Africa	22 of LTIA & 21 of STIA	Due to the prejudice that could be suffered by the relevant persons herein and the contractual and/or labour law ramifications, there should be a "right to reply" provision.	Noted. PAJA will apply to the Registrar's decision and the insurer may appeal the decision. The insurer will have to provide for appropriate internal policies and agreements.
186.	Regent	22 of LTIA & 21 of STIA	The consequences of this type of extreme interference in a company's affairs must not be underestimated. The decision as to whether a person complies with the fit and proper requirements must rest with the Registrar. The Company is then compelled to abide by a ruling from the Registrar to remove a director or, or terminate a senior manager or person in a control functions employment. It is incumbent on the Registrar to ensure that the department of labour is brought into this process to ensure that where employment is terminated as a result of a ruling by the registrar that any complaint, legal proceedings etc. that follow take the provisions of this Act into account. The Companies act also caters for the removal of Directors and disqualification of Directors. The decision of the Regulator must be subject to normal administrative law review and appeal processes especially in light of the severe consequences attaching to that decision. It would be preferable for the Regulator to make a recommendation to the Company with reasons for the recommendation- the Company and its board should decide if it wishes to a accept the recommendation. This highlights to need for clear requirements relating to fit and proper requirements. If a person prima facie meets those requirements it should be up to the Regulator to provide evidence to the contrary. This also ties into earlier concerns raised relating to the limitation of liability of the Regulator. If this section proceeds in its current form then the Register should	Please note that the provision provides for the removal from or termination of an appointment and obliges the insurer to ensure that the persons does not involve him/herself with the oversight, management or control functions of the insurer. The provision does not require termination of any employee-employer relationship. A person may remain in the employment of the insurer, but may no longer perform the functions associated with the relevant appointment.

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			not be permitted to limit is liability. Section 21 (b) states that the removal of the Director must occur within 14 days- that is both unreasonable and unrealistic. The Company will be obliged to provide the Director or employee with notice in terms of his contact of employment and even if the contract where to cater for this very short period of 14 days it is submitted that if challenged a court would probably find that it was an unreasonable notice period.	
187.	Alexander Forbes Life	22 of LTIA & 21 of STIA	Powers of the Registrar to disqualify certain appointments made by insurers - does this practically mean that all appointments should be presented to the Registrar for approval and the concern that it will cause business interruptions. Clearer guidelines need to be provided as to when an appointment can be disqualified by the Registrar.	Noted. The Registrar must be notified of these appointments, save for the appointment of the statutory actuary and auditor that must be approved. This is consistent with the existing provisions (section 18) of the Insurance Acts.
188.	eThekwini Municipality	22 of LTIA & 21 of STIA	Refers to the removal of appointees. It is submitted that this proposed section does not state in what manner and form the Registrar may make an instruction. It also does not provide for the Registrar to give reasons for the instructions.	Noted. PAJA will apply to a decision of the Registrar and the insurer may appeal the decision. Also see section 3(1) of the Insurance Acts that requires all notices to be in writing.
189.	ASISA	52(1) of LTIA	If a premium under a long-term policy, other than a fund policy or a reinsurance policy, has not been paid on its due date, the long-term insurer shall within 7 days of the due date notify the policyholder of the non-payment, and the policy shall, notwithstanding anything therein to the contrary, in the case of a long-term policy under which there are to be two or more premium payments at intervals of— (a) one month or less, remain in force for a period of 15 days after that due date; or (b) longer than one month, remain in force for a period of one month after that due date, or for such longer period as may be determined by agreement between the parties, and if the overdue premium is not paid by the end of any such period, the policy shall be dealt with in [accordance with subsection (2)] the manner prescribed by the Registrar. The proposed amendment will require an insurer to notify policyholders of the non-payment of premiums within 7 days of the due date of the premium payment. This proposed requirement is both unrealistic and impracticable. Many payment methods e.g. debit orders and stop-orders are not controlled by the insurer.	The 7 day period provided in the amendment will be reconsidered by allowing the Registrar to prescribe the applicable period.  A recent review by the Registrar has indicated that the current provision is not consistently understood and applied, and does not always adequately protect policyholders. The requirements for dealing with non-payment of premiums are policyholder protection issues that are best included in the Policyholder Protection Rules (PPRs). The Bill provides for the Registrar to prescribe measures to achieve adequate policyholder protection. There will be appropriate consultation and transitional measures on these rules.

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			Insurers are only made aware of the non-payment of premiums in the case of stop-order payments after the lapse of 45 days after a premium became due. While the period could be shorter in the case of debit orders, an insurer will only be able to comply timeously with any prescribed period if the insurer itself is aware of the non-payment of the premium. A shorter notice period could only be achieved if banks change their systems and procedures. A 7 day notice period may lead to unjust results and substantial expenses for the stakeholders concerned. The replacement of the existing subsection (2) with an authority to the Registrar to prescribe the manner in which overdue premiums are to be dealt with may violate the parties right to freedom of contract as well as entrenched principles of freedom to contract. The existing subsection (2) recognises the regard for the rules of the long-term insurer. The prescriptions of the Registrar may in future negate these rules and entrenched rights and obligations, and will also lead to legal uncertainty. Section 12(2)(c) of the Interpretation Act 33 of 1957 provides that, unless the contrary intention appears, a repeal shall not —affect any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed. Even if the proposed amendment is to apply prospectively, then the anomalous situation would result whereby there would be different legal requirements dependent on whether a policy was in existence before or after the commencement of the proposed amendment. The rationale for these proposed amendments are not explained in the Explanatory Memorandum and it is thus not possible to determine what mischief is intended to be addressed or to propose alternative measures to address those. The proposed amendments are, with respect, not appropriate in that insurers are obliged in terms of section 46 to ensure that their policies are actuarially sound. The Registrar should not be able to prescribe matters which may impact on the actuarial soundness of policies. Such prescriptions may result in substantial expenses for insurers as systems may need to be changed. This does not seem justifiable in that the proposed amendment will not necessarily afford customers with any additional protection, but will increase administrative complexity. In practice insurers often resubmit an unpaid debit order which cures the non-payment. As such insurers often only give notification of a missed premium if the premium remains unpaid notwithstanding such resubmission. The customer is however not prejudiced in that section 52 makes it clear that the policy remains on books until such time as a notice has been sent. It is thus arguable that the proposed amendment is not necessary	

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			in order to protect clients. ASISA members submit that the proposed amendments should be deleted.	
190.	Regent	52(1) of LTIA	A period of 7 days is proposed within which the Insurer is required to notify a policyholder of non-payment of premium. The period suggested for notification is inadequate and does not take into account practical considerations such as the fact that policyholders can select different payment dates making premium reconciliation difficult if the 7 is enforced. The ability of the Registrar to determine what happens to the policy in the event of non-payment is undesirable and we suggest that this is deleted. A policy is first and foremost a contract between the Insured and the Insurer. The current wording provides adequate protection to the policyholder as the grace period affords the policyholder the opportunity to rectify the non-payment.	See comment above.
191.	Regent	62 of LTIA	Contains a Typo (claims not claim.)	Agreed. 
192.	Alexander Forbes Life	Part VIIA of LTIA & STIA	The purpose in the Bill of identification of an “insurance group” and requiring that an “insurance group” identifies its Head, Governing Body and Senior Management, is so as to protect the interest of policyholders and stakeholders. The Bill also requires those parties to maintain an oversight of all functions and activities. Consequently, these requirements aim to hold these stakeholders accountable for any material function or activity, including those that are outsourced. These provisions must be aligned with FAIS as such persons if responsible for an insurance function have to be properly authorised in terms of FAIS.	Noted. The requirements will be aligned with the FAIS Act to the extent possible bearing in mind that the requirements for insurers and holding companies of insurers may differ as the business conducted differs from that regulated under the FAIS Act.
193.	AIG South Africa Limited	65A of LTIA & 55A of the STIA	Section 55 of ILAB introduces the concept of Group supervision. As previously stated, the AIG insurance group in South Africa consists of AIG South Africa Limited (AIG SA) which is a Short-term license holder and AIG Life South Africa Limited (AIG Life), which is a Long-term Insurance Holder, with both entities commonly and wholly owned by Johannesburg Insurance Holdings (Pty) Ltd (JIH). JIH is a non-operating holding company whose only business is the holding of both AIG SA and AIG Life SA. There is no level of influence vested in or exercised by JIH over either AIG SA or AIG Life SA. It remains uncertain as to the extent to which	Noted. The group supervisory framework is referred to in Discussion Document 1 and has also been published for comments by the SAM Structures. Further detail of the group supervisory framework will be dealt with in the subordinate legislation and the group reporting requirements. In respect of the interim group reporting requirements, the proposals have been field tested within some of the members of the Insurance Groups Task

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			the National Treasury proposes to enforce the concept of Group Supervision within the context of AIG South Africa's insurance group. To this end, further clarity is sought with regard to the intention and proposed supervisory methodology proposed by the National Treasury in order to deliver informed commentary on the concept of Group Supervision as envisaged by the National Treasury.	Group under the SAM Structures. In this particular case the insurance supervision requirements will apply to JIH being the ultimate holding company in South and all of its subsidiaries (irrespective of whether those are registered in South Africa or not).
194.	eThekwini Municipality	65A of LTIA & 55A of STIA	The definition of 'financial conglomerate' in terms of section 65A' refers. The word 'or' which appears after the semicolon in (b)(iii) should be deleted.	Disagree. The word is correctly placed.
195.	ASISA	65A of LTIA	"insurance group" means two or more persons— (i) at least one of whom is subject to registration under this Act; and (ii) at least one of whom has a significant influence on the person referred to under paragraph (a); and (iii) their related and inter-related persons, but excludes any holding company of a person referred to in paragraphs (a), (b) and (c) that is incorporated outside of the Republic; The proposed section 65D(1)(a) provides that the Registrar may determine the scope of the insurance group for the purpose of group supervision. It is uncertain how this provision interacts with the definition of —insurance group. Does it mean that the Registrar may decide what constitutes an insurance group despite the definition or does it mean that the Registrar may identify the entities in the insurance group (as included in the definition) to form an insurance group for the purposes of group supervision? It is assumed that references to (a), (b) and (c) should be references to (i), (ii) and (iii). The definition is also somewhat difficult to interpret. Is the intention to include foreign companies? The definition includes a South African insurer (i), a person with significant influence over the SA insurer (ii) and their related and inter-related persons (iii). Does the exclusion apply to the foreign holding company of the SA insurer, person with significant influence over the SA insurer and their related or inter-related parties or does it apply to the holding company (SA or foreign) of any foreign insurer, foreign person with	Noted. This means that the Registrar may identify the entities in the insurance group (as included in the definition) to form an insurance group for the purposes of group supervision. An amendment will be proposed to clarify that the exclusion applies to both (b) and (c) [as corrected]. As to the references: Agreed.  An Insurance group encompasses all entities below the South African holding company irrespective of whether they are local or foreign entities, or regulated or non-regulated entities. The definition will be reconsidered to assess if additional clarity can be provided for. 

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			significant influence over a foreign insurer or their foreign related and inter-related persons.	
196.	Professional Provident Society	65A of LTIA & 55A of STIA	Insurance group means two or more persons- At least one of whom is subject to registration under this Act; and at least one of whom has a significant influence on one person referred to under paragraph (a); and their related and inter-related persons, but excludes any holding company of a person referred to in paragraphs (a), (b) and (c) that is incorporated outside of the Republic. It is clear that foreign controlling companies of insurance groups that are based in South Africa are not regarded as part of an insurance group for purposes of Part VIIA of the Bill. It is however not clear whether subsidiaries of the companies with an insurance group which are registered in foreign jurisdiction are part of the insurance group definition. We recommend that this be clarified.	Noted. An Insurance group encompasses all entities below the South African holding company irrespective of whether they are local or foreign entities, or regulated or non-regulated entities. The definition will be reconsidered to assess if additional clarity can be provided for.
197.	eThekwini Municipality	65A of LTIA & 55A of STIA	The definition of 'insurance group' refers. The numbering (i); (ii) and (iii) should be deleted and replaced with (a); (b) and (c) to create continuity in the use of numbering in the Bill.	Agreed.
198.	ASISA	65A of LTIA	"inter-group transaction" means any arrangement or agreement in terms of which a long-term insurer, directly or indirectly, relies on another person that is part of the insurance group or a related or inter-related person of the aforementioned person, for the fulfilment of an obligation; Does this definition include the transfers of insurance business between related parties in an insurance group, i.e. section 37 transfers?	An amendment will be proposed to amend the word "inter" to "intra" throughout the Bill. If the transfers are between insurers within the same group. The transfers of business between related parties are considered to be intra-group transactions but would be dealt with under the current section 37 of the LTIA. In this context it refers to investments made / amounts due or reinsurance arrangements entered into with related parties.
199.	SAIA	55A of STIA	"non-operating holding company" means a holding company that is a public company whose only business is the acquiring, holding and managing of another company or other companies; It is unclear if this entity is allowed to:	Any activities relating to the acquiring, holding and managing of another company or other companies are allowed. The reference to "managing" implies that the NOHC may insource functions from its participating companies.

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			1. Outsource 2. Employ staff It is recommended that such non-operating holding company should be allowed to perform services as outsourced from its participating companies (e.g. control functions) as such outsourcing may result in efficiencies across an insurance group. Corollary to the previous statement a non-operating holding company should be allowed to employ staff to perform certain services to its participating companies.	
200.	ASISA	65A of LTIA	"non-operating holding company" means a holding company that is a public company whose only business is the acquiring, holding and managing of another company or other companies. The Explanatory Memorandum does not contain any motivation for requiring that the non-operating holding company should be a public company. The impact and consequences of this proposed requirement needs to be assessed before it is introduced. The restructuring of privately held insurers will be a costly exercise and will impact on other group companies which businesses are not related to the insurance business. It appears as if the biggest impact will be for insurers with licences limited to linked insurance business. Please also refer to the general comments on clause 16 inserting section 65E (Incorporation of or conversion to a controlling company) into the Act.	Noted. The comment will be considered. 
201.	Professional Provident Society	65A of LTIA	Non-operating holding company means a holding company that is a public company whose only business is the acquiring, holding and managing of another company or other companies. This comment is specific to PPS: We would like the NT and FSB consider whether the activities of the holdings entity of PPS Insurance, PPS Holdings Trust, will be regarded as "business" as contemplated in the definition of 'non-operating holding company' and thereby not allowed. (See comments later about the impact of converting the trust to a company. For purposes of this section we assume reference to the non-operating holding company, is reference to the parent of the insurance company.) PPS Holdings Trust, apart from acquiring, holding and managing PPS Insurance Company, provides PPS membership to prospective policyholders	Noted. The comment will be considered. 

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			which enables such members to apply for policies with PPS Insurance Company and other related entities. The membership concept form the basis of the ethos of mutuality by which the PPS Group is operated and distinguished in the market, as membership provides a gateway to the product suite of the PPS Group and ultimately, a share of the profits of the company. Apart from assessing and allowing members, no other business is conducted by the PPS Holdings trust. It is our view that the PPS Holdings Trust does not conduct any business because no products are sold through the trust but only through PPS Insurance and its subsidiaries, and the business of providing membership is incidental and necessary for the issuing of policies of insurance only. By not allowing any other 'business' to be conducted by the Non Operational Holdings Company, the essence of PPS' mutuality is impacted and we respectfully request an amendment to accommodate limited services provided by the non-operating holdings company. We propose that the definition of 'Non Operational Holdings Company' be extended to provide for business activities necessary for issuing of policies by the Long-term Insurer. .	
202.	SAIA	55A of the STIA	"risk concentration" means any risk exposure that has a loss potential large enough to threaten the financially sound condition of a short-term insurer that is part of an insurance group; and The SAIA recommends that risk concentration is not limited to financial soundness as risk concentration could take place even if such concentration does not threaten financial soundness.	For the purposes of the Bill it is appropriate to limit risk concentration to matters relating to the financial soundness. In this regard it must be noted that conduct of business risks may impact on financial soundness.
203.	SAIA	55A of STIA	'significant influence' means, amongst others— (a) a related or inter-related person; (b) inter-connectedness; (c) risk exposure; (d) risk concentration; (e) risk transfer; (f) inter-group transactions;	Noted. The definition and the various elements thereof will be reconsidered.  The % shareholding will be considered as it relates to the related and inter-related definitions provided for in the Bill. Discussion Document 1 makes it clear which entities would initially be included. Please refer to the recommendation box under par 10.2.2 of Discussion Document 1. All suppliers will be considered against the

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			(g) other transactions; (h) contractual obligation; or (i) of any combination of subparagraphs (a) to (h). The Bill should include definitions for “inter-connectedness”, “risk exposure” and “risk transfer”. The other indicators in the list are defined. Clarity is requested on whether the Regulator will consider, in addition to the consideration of significant influence, the percentage shareholding (i.e. associates and subsidiaries as defined within IFRS and the companies act) to establish whether an insurance entity forms part of an insurance group. The consequence of the definition above is that it can include suppliers of services such as salvage yards. It is unclear if it is the intention to include suppliers in the “group”.	definition of “significant influence”.
204.	ASISA	65A of LTIA	“significant influence” means, amongst others— (a) a related or inter-related person; (b) inter-connectedness; (c) risk exposure; (d) risk concentration; (e) risk transfer; (f) inter-group transactions; (g) other transactions; (h) contractual obligation; or (i) of any combination of subparagraphs (a) to (h). In practice it will be very difficult to determine the scope of groups taking into account the criteria set in the proposed definition of significant influence. For example where an insurer reinsures all its	Noted. The definition and the various elements thereof will be reconsidered.  The definition of “insurance group” defines what constitutes such a group. In determining the scope of an insurance group (i.e. determining the entities included within the group for regulatory and supervisory purposes) the Registrar will determine which entities have a significant influence over the insurer/s within the group. IRFS10 is too limited for purposes of determining the scope of a group for regulatory and supervisory purposes, but is recommended to be used as a basis for determining the scope of the group. In this regard please refer to the recommendation box under par 10.2.2 of Discussion Document 1.

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			liabilities outwards to a reinsurer (e-risk transfer), is there a group relationship? Or, where an insurer's investment portfolio comprises 100% government bonds (d-risk concentration), is there a group relationship with the government? It is recommended that the criteria for establishing a group relationship be set (similar to IFRS10) with reference to the following: • Power over the investee (i.e. ability to direct the activities of the investee); • Exposure, or right of the investor to variable returns from the investee; • Ability of the investor to use power over the investee to affect the amount of the investor's returns.	
205.	Regent	65A of LTIA & 55A of STIA	"significant influence: Includes the use of vague terms such as "other transactions" and "contractual obligations"- We suggest that (g) and (h) are deleted - the inclusion of these vague terms could lead to suppliers being included as parties who have a significant influence, which surely cannot be the intention. Our reading of the ILAB is that the NOHC can employ people to provide services within the group on an outsource basis. This is the preferred approach as it allows for efficiencies within a group structure.	See comment above.
206.	eThekwini Municipality	65A of LTIA & 55A of STIA	The definition of 'of significant influence' refers. It is submitted that the words 'amongst others' should be deleted as this suggests that the list is open-ended.	The intention is indeed that the list is open-ended.
207.	SAIA	55C(2)(a) of STIA	(1) This Part applies to all insurance groups, subject to subsection (2) and section 55D. (2) (a) The Registrar, on application from a short-term insurer that is part of an insurance group (other than a financial conglomerate or an insurance sub-group) that has more than one insurer that is subject to this Act or the principal Act may exempt that **insurance group** from this Part on the conditions determined by the Registrar. It appears as if this clause does not read correctly. The words "Insurance Group" in bold should be replaced by the words "short-term insurer".	Disagree; the insurance group may be exempted from the Part that applies to groups. An amendment will be proposed to correct the misalignment of the part in brackets with that of the new section 65C under the LTIA, i.e. the closing bracket will move to after "the principal Act". 

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				An amendment will be proposed to change the term "principal Act" to the "Long-term Insurance Act, 1998".  An amendment to 55C(3) will be proposed to clarify that this subsection applies to insurance groups that are not exempted under subsection (2). 
208.	Professional Provident Society	65C(2)(a) of LTIA	The Registrar, on application from a long-term insurer that is part of an insurance group (other than a financial conglomerate or an insurance sub-group that has more than one insurer that is subject to this Act or the Short-term Insurance Act, 1998), may exempt that insurance group from this Part on the conditions determined by the Registrar. This comment is specific to PPS The main reason for incorporating a non-operating holding company (as set out in SAM Discussion Document 1: Interim Measure for Insurance Groups) is to achieve an easier application of fit and proper, internal control and risk management requirement if governance, strategic direction and senior management are concentrated at NOHC level. It is further stated that exception would most likely be given to insurance groups which are supervised on a solo basis – meaning the exemption will not be available for financial conglomerates. We assume that the reason for excluding financial conglomerates from the exemption is the belief that a financial conglomerates is always subject to the governance structure at the holdings entity level. However in the case of companies such as PPS the governance structures required by the draft Bill are housed within the insurance company itself despite the group falling within the definition of a financial conglomerate. However in the case of PPS this all the governance measures are controlled from the PPS Insurance Company. The board of directors have subcommittees required by the draft Bill. There is a compliance function which ensures that all legislative requirements, e.g. fit and proper are implemented and such implementation is monitored etc. We therefore see no reason why such a structure would not afford the Registrar the necessary insight and transparency to sufficiently assess an application for	The comment will be considered. 

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			exemption as it would do in an insurance solo structure. We also point out that the Registrar will still have the option of imposing conditions for the exemption where necessary. We therefore recommend that the exemption provided for in this section be extended to financial conglomerates as well, as the relevant governance measures may be provided in the long-term insurer and not at the Non-Operating Holding Company level. We believe this is a factual enquiry and should the FSB be satisfied with the level of control and governance at the insurance company level, it should be able to grant the exemption.	
209.	Regent	65C(2)(a) of LTIA & 55C(2)(a) of STIA	We reiterate the need for transparency where the Registrar uses its discretion to allow for deviation from the requirements as set out in the Act.	PAJA will apply in respect of the decisions of the Registrar and any exemptions will be published on the website of the FSB.
210.	SAIA	55C(3) of STIA	(3) If an insurance group or insurance sub-group consists of at least a short-term insurer and at least a long-term insurer as defined in the Long-term Insurance Act ~~Act~~ the group or sub-group is subject to Part VIIA of the Long-term Insurance Act, 1998 Comment: It is proposed that the word "Act" should be deleted as it is a repetition.	Agreed. 
211.	SAIA	55D of STIA	The insurance group should be afforded the opportunity to appeal the decision.	See section 3(3) of the Insurance Acts that refers to the right of appeal under the FSB Act.
212.	SAIA	55D(1)(a) of STIA	What does "scope" entail? Provide clarity alternatively use an appropriate terminology to give effect to the intention.	Scope refers to the scope of an insurance group, i.e. the entities included within the group for regulatory and supervisory purposes. See IAIS ICP 23.
213.	eThekwini Municipality	65D(1)(a) of LTIA & 55d(1)(a) of STIA	The word 'and' must be deleted after the words 'long-term insurer'. It is submitted that the word 'may' or 'must' should be included in (iii) before the words 'determine that an insurance'.	Disagree. The word "and" relates to a specific obligation in respect of "financial conglomerates. Agreed. 
214.	eThekwini	65D(1)(b) of	This creates a list which refers to the words 'and' and 'or'. This	Disagree. The words are positioned correctly.

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	Municipality	LTIA & 55D(1)(b) of STIA	must be clarified.	
215.	ASISA	65D(1) of LTIA	(a) The Registrar must, in respect of each insurance group, and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, determine the scope of the insurance group that is subject to this Part and, in writing, inform the holding company of that insurance group accordingly. (b) In determining the scope of an insurance group that is subject to this Part, the Registrar— (i) must consider the significant influence that a person or persons have on a long-term insurer; and (ii) may exclude certain persons from that insurance group; or (iii) may determine that an insurance sub-group constitutes the insurance group for purposes of this Part. The word “may” should be inserted at the beginning of subsection (b)(iii). ASISA members are of the opinion that a holding company of an insurance group should have an opportunity to respond to the Registrar‘s determination of the scope of an insurance group as it may have an impact on a group‘s structure and may also require an increase in resources. Please also refer to the comments on the proposed definition of insurance group as proposed to be inserted as section 65D(1) into the Act by clause 16 of this Bill.	Agreed. An amendment will be proposed to insert the word “may”.  See section 3(3) of the Insurance Acts that refers to the right of appeal under the FSB Act.
216.	ASISA	65D(2) & (3) of LTIA	The insurance group as determined by the Registrar under subsection (1) is subject to this Part. (3)(a) The Registrar may at any time because of a change in the significant influence that a person has on a long-term insurer, by written notice to the controlling company referred to under section 65E, amend the scope of the insurance group that is subject to this Part. (b) The insurance group as amended under paragraph (a) is	Noted.

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			subject to this Part. It should be noted that an amendment of the scope of the insurance group should allow for a reasonable period for adjustments to be made as a result of such amendment.	
217.	SAIA	55E(1) of STIA	A holding company of an insurance group referred to under section 55D that is not a controlling company, must, within 4 months of being informed of the scope of the insurance group that is subject to this Part— The SAIA is strongly of the opinion that 4 months is not sufficient time allowed to comply, as too many external factors influence the industry's ability to comply. We recommend a period of 12 months.	The timing proposal will be considered. 
218.	SAIA	55E(1) of STIA	A holding company of an insurance group referred to under section 55D that is not a controlling company, must, within 4 months of being informed of the scope of the insurance group that is subject to this Part— Clarity is required whether this "holding company" refers to the NOH Company.	Yes, but it may not yet meet the definition of "controlling company". The provision is written to compel the holding company to become a controlling company (i.e. non-operating and purpose).
219.	ASISA	65E	As indicated in the comments on the definition of non-operating holding company, the motivation for requiring that the non-operating holding company should be a public company is not clear. The impact and consequences of this proposed requirement may have a significant impact on linked life insurers. It may not be feasible, as it would also not be able to be an investment manager (per the definition, it can only acquire, hold and manage another company or companies). It is not certain why holding companies should be public if the insurer is required to be a public company. By including all the relevant risks in the insurer's public report, an adequate level of disclosure is provided to investors to assess the solvency and financial position of the insurer. A report by the holding company to the Registrar will facilitate supervision of the risk inherent in a group and it should not be necessary to issue this report to the general public. The value in the additional public reporting is not clear.	The comment will be considered.  As to public reporting requirements, note that these are consistent with international standards and practises.
220.	Professional Provident Society	65E of LTIA	A holding company of an insurance group referred to under section 65D that is not a controlling company, must, within 4 months of being informed of the scope the insurance group that is subject to this Part- Incorporate a controlling company or convert to a	The comment will be considered.

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			controlling company….. Our comment is specific to PPS. As mentioned above, PPS has a Holdings Trust structure and this entity was recently approved by the FSB as the holdings entity of the PPS Insurance Company following new requirements of the Companies Act of 2008. We are of the view that it is unreasonable for the FSB to expect PPS to convert its Holdings Trust to a holding company structure. Especially as no services but new membership is provided and the governance measures prescribed by the FSB are in place which are similar to key Companies Act provisions. We recommend that an exemption in respect of this provision be considered for structures of similar nature. It is our view that should this recommendation be rejected it would lead to unnecessary costs of insertion of a company in between the trust and the long-term insurer which will add no meaningful value to the group.	
221.	Regent	65E of LTIA & 55E of STIA	This places an obligation to convert or to incorporate a controlling company within a period of 4 months. Restrictions in terms of the Companies Office must be borne in mind. We therefore we suggest that a period of at least 12 months is provided.	Noted. The timing proposal will be considered. 
222.	SAIA	55F(1)(a) of STIA	(1) A controlling company must ensure that the structure of the insurance group at all times does not impede the— (a) **financial stability and financial soundness** of any short-term insurer that is part of the insurance group; or In order to effectively comply, the SAIA recommends that “financial stability” and “financial soundness” be defined.	An amendment will be proposed to remove the obligation from the controlling company, but to allow the Registrar to direct a change in the group structure should the criteria listed in subsection (1) not be met.  Note that financial soundness refers to the requirements stated in 55K. Defining of the term “financial stability” will be considered. 
223.	Regent	65F(1) of LTIA 7 55F(1) of STIA	“Financial stability and financial soundness”- these concepts are not defined in the ILAB and we submit that this requirement is superfluous taking into account that capital and solvency requirements are already catered for in the STIA and the Companies Act.	What constitutes financial soundness is clarified in 65K of the LTIA and 55K of the STIA. Defining of the term “financial stability” will be

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				considered. 
224.	Oasis Crescent Insurance Ltd	65F(2)(a) of LTIA	The paragraph gives the Registrar wide powers to require changes to the group structure without consulting with the insurer or the controlling company or allowing them to make representations to the Registrar. The paragraph should provide for the Registrar to consult with the insurer and controlling company before requiring any changes to the structure of the insurance group, in order for the insurer or controlling company to make representations to the Registrar.	PAJA applies to any administrative action unless same is exempted under section 2 of PAJA. The actions of the Registrars of Long- and Short-term Insurance are not exempted under section 2 of PAJA. Section 3(2) of PAJA therefore applies. PAJA therefore will apply in respect of this section. Section 3(3) of the Insurance Acts further provides for a general right to appeal in respect of all decisions of the Registrar under the Acts.
225.	SAIA	55F(2)(b) of STIA	(b) The controlling company must, within one month after the directive referred to in paragraph (a) is issued, submit a resolution scheme to the Registrar for approval to amend the structure of the group within four months of the issuing of such directive. The SAIA strongly believes that 4 months is not sufficient time allowed to comply as too many external factors influence the industry's ability to comply. We recommend a period of 12 months.	The timing proposal will be considered. 
226.	SAIA	55F(1)(b)(i) of STIA	Is it the intention to consider and take into non-insurance related business activity within the insurance Group or does this only apply to "insurance activity". Please clarify.	Yes, it is the intention to also consider non-insurance related business activity of the group.
227.	SAIA	55F(2)(b) and (f)	The SAIA recommends that the Regulator provides the format details.	Disagree. As the situation and the resolution plan will differ from group to group a prescribed format would not assist.
228.	SAIA	55F(2)(b) of STIA	The time periods in which to give notice do align properly. Should read "… within four months after the approval by the Registrar"	Disagree. The plan must provide for the structure to be amended within 4 months. However, as stated above, the timing proposal will be considered.

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229.	ASISA	65F(1)(b) & 2(a) of LTIA	(1) A controlling company must ensure that the structure of the insurance group at all times does not impede the— (b) ability of the Registrar to determine— (i) how the different types of business of the insurance group are conducted; (ii) the risks of the insurance group and each person that is part of that insurance group; or (iii) the manner in which risk management is organised and conducted for the insurance group and each person that is part of that insurance group. (2)(a) The Registrar may, if the Registrar is of the opinion that the structure of an insurance group does not comply with subsection (1), and after consultation with other relevant regulatory authorities in the case of a financial conglomerate, direct the controlling company to amend the structure of the insurance group. (b) The controlling company must, within one month after the directive referred to in paragraph (a) is issued, submit a resolution scheme to the Registrar for approval to amend the structure of the group within four months of the issuing of such directive. (c) the controlling company whose resolution scheme was approved under paragraph (b) must submit a monthly progress report to the Registrar that sets out the measures taken and the progress made with implementing the resolution scheme. (d) The Registrar may restrict or prohibit certain activities or transactions until the resolution regime is implemented. (e) The Registrar may extend the four month period referred to in paragraph (b) by an appropriate period of time, taking into account all relevant factors. (f) The Registrar may take such regulatory action that the Registrar deems necessary and appropriate if the controlling company fails	Noted. Also the timing proposals will be considered. A period of three months for the submission of the plan should suffice. Further the plan must propose the timeline for the implementation thereof.

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			to submit a resolution scheme, fails to report as provided for under paragraph (c), or fails to implement a resolution scheme or implement a resolution scheme within the specified timeframe. It is understood that the proposed section 65F(1)(b) basically requires that a controlling company must ensure that the structure of the group does not impede the ability of the Registrar to understand the businesses and risks of the group and the manner in which risk management is organized and conducted. The proposed section 65F(2)(a) then provides the Registrar with the ability to change the structure of the group. Whilst it is understandable that the Registrar wishes to legislate that insurance groups should not be structured to the extent that its activities are not transparent to the Registrar, the potential consequences of the proposed requirements should not be underestimated. The section 65F(2)(b) appears to be impractical. One month may not be enough time to agree a resolution scheme to give effect to a directive of the Registrar to change the structure of an insurance group as extensive consultation within a group may be required. Even If the company submits its resolution scheme within a month of receiving the Registrar's directive, and if the Registrar approves the resolution scheme immediately on submission, it is unlikely from a practical perspective that a group structure will be amended within a further three months. The timeframes within which amendments to the structure of an insurance group may practically differ from group to group. It would make more sense that these timeframes are agreed between the controlling company and the Registrar as it is likely that every restructuring will require an exemption as provided for in the proposed section 65F(2)(e).	
230.	SAIA	55G(1) of STIA	prior to making any other acquisition or disposal, notify the Registrar of that **acquisition**…. The sentence is incomplete. The following should be added after acquisition…."or disposal."	Agreed. 
231.	SAIA	55G(1) of STIA	Adequate timelines are required and should be included in order to ensure that business plans are executed in a timely manner and not negatively influenced due to the approval/review process.	Noted.
232.	ASISA	65G(1) of LTIA	A controlling company must— (a) prior to making a material acquisition or disposal, obtain the	Disagree. Any acquisition or disposal may significantly impact the financial soundness or risk profile of the group and should be brought

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			approval of the Registrar; (b) prior to making any other acquisition or disposal, notify the Registrar of that acquisition. It is appreciated that the Registrar requires the ability to approve a material acquisition or disposal but ASISA members are concerned that the approval is an onerous requirement in the event that the acquisition or disposal is not related to insurance business. There may be requirements from other regulatory authorities. Furthermore a long delay in obtaining the Registrars approval may be prejudicial to the parties concerned. It is suggested that consideration be given to narrow the application of this proposed section to more clearly indicate which circumstances will require the approval of the Registrar as opposed to an open-ended provision.	to the attention of the Registrar. Please note that material acquisitions or disposals only require approval; other acquisitions or disposals require notification only. An amendment to define "material" will be proposed. 
233.	eThekwini Municipality	65G(1)(a) of LTIA & 66G(1)(a) of STIA	It is submitted that the word 'and' be inserted after the semicolon.	Agreed. 
234.	eThekwini Municipality	65G(1)(a) of LTIA & 55G(1)(a) of STIA	The reference to 'a material acquisition or disposal' creates an 'dangling modifier'. It must be clarified whether or not the disposal must also be material. It is submitted that section 65G(1) should be amended to read: A controlling company must- Obtain the approval of the Registrar prior to making a material acquisition or a material disposition; or Notify the Registrar prior to making any other acquisition or disposal."	Disagree. The wording is clear and cannot be misinterpreted as being associated with a word other than the one intended.
235.	Regent	65G(1) of LTIA & 55G(1) of STIA	See previous comments relating to materiality. Suggest that the requirement that the registrar also be notified of other acquisitions or disposals be deleted.	Disagree. Such acquisitions and disposals may pose risks to the group that the Registrar should be aware of.
236.	ASISA	65H(1) of LTIA	Sections 18, 22, 24, 26 27 and 28, and sections 41 to 43 (inclusive), apply with the necessary changes to a controlling company. It is submitted that section 26 of the Act should not apply to controlling companies which are listed entities as these entities have no control over the share ownership.	Please note that the section places the obligation on the acquirer not the insurer. Please also see FSLGAB in this regard.

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237.	SAIA	55I of STIA	Relaxation should be afforded to solo insurance entities when governance at group level is strong or where outsourcing takes place from solo entities towards the group. For example, a Group Board that satisfies the criteria of majority independents may alleviate the need to apply all the principles set out in the Insurance Laws Amendment Bill at solo level. For example, where the Audit Committee and/or Risk and Compliance Committee of the Group Board are established there should be no need to establish same at solo entity level.	Aspects of the governance framework may be outsourced within the group; where this is the case, the insurer must still be able to oversee the proper performance of outsourced activities.
238.	SAIA	55I of STIA	The relevant provisions of Part IIA apply, with the necessary changes, to a controlling company if that controlling company— (a) provides a governance framework or a part thereof (such as the risk management system or internal control system) for or facilitates that it is provided by any person in the insurance group for or on behalf of any short-term insurer or insurer Examples should not be included in legalisation.	Disagree. The inclusion of the reference to risk management system or internal control system provides further clarity and legal certainty.
239.	SAIA	55J of STIA	A controlling company must ensure that its directors, and senior managers and heads of control functions (where section 55I applies), at all times meet the fit and proper requirements in respect of, amongst others, personal character qualities of honesty and integrity, competence, qualifications, continued professional development and experience, to facilitate the sound and prudent management of the insurance group. The SAIA has noted that the definitions of fit and proper in the section on Governance has been improved from the first version of the ILAB and is no longer a copy of the FAIS act. This section (55J) should also be corrected and aligned to the Governance section as it is currently a copy of the fit and proper of FAIS.	Agreed. Please note that this definition will be deleted. The definition as provided for in the FSLGAB will remain. 
240.	ASISA	65J of LTIA	A controlling company must ensure that its directors, and senior managers and heads of control functions (where section 65I applies), at all times meet the fit and proper requirements in respect of[, ~~amongst others~~,] personal character qualities of honesty and integrity, competence, qualifications, continued professional development and experience, to facilitate the sound	Please note that this definition will be deleted. The definition as provided for in the FSLGAB will remain.

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			and prudent management of the insurance group. Please refer to the comments on the definition of —fit and proper requirementsll in clause 1(c) of the Bill.	
241.	eThekwini Municipality	65J of LTIA & 55J of STIA	It is submitted that the word 'and' which appears before the word 'senior' be deleted.	Agreed. 
242.	Oasis Crescent Insurance Ltd	65I of LTIA	The provisions of this section effectively add another regulated entity to the insurance group (the controlling company may not be an operating company so it cannot be an existing regulated entity). This will have a significant cost impact on smaller insurance groups, because it will result in additional capital requirements, a second board of directors complying with the requirements of the Act, a second audit committee that complies with the Act, additional audit at consolidation level, etc. As can be seen, this will add significant cost for the insurer; cost that will ultimately be recovered from the policyholders. This is not to the benefit of the policyholders, which is contrary to the objective of the Act. The imposition of the additional requirements for insurance groups must be made subject to the nature, scale and complexity of the solo insurer and the group.	Noted. The governance framework may be outsourced within the group; where this is the case, the insurer must still be able to oversee the proper performance of outsourced activities. The requirement for the establishment of a non-operating holding company does not require additional capital to be held in the group provided that all the entities within the group are solvent and not funded via intragroup transactions. Financial conglomerates are not exempted from the group supervision requirements because insurers within the group are exposed to additional risk (such as reputational risk) by virtue of it being part of a group. This is so because financial conglomerates operate in an integrated and interdependent basis. Group wide supervision will further assist in avoiding regulatory arbitrage and capital not being "created" within the group via intragroup transactions.
243.	eThekwini Municipality	55I of STIA	Words in brackets: It is submitted that clarification is sought as to whether these are examples or the only systems intended to be applicable to this section. It is submitted that types of provisions which appear in brackets may lead to uncertainty and should be avoided.	Disagree. The use of brackets is consistent with modern drafting techniques and provides for further clarity in respect of the scope of the provision.
244.	SAIA	55K(2) of STIA	(2) A controlling company that fails to comply with subsection (1) must, without delay, notify the Registrar of the failure and furnish	The phrase "without delay" means exactly that. The Registrar must be notified as soon

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			the reasons therefore. The members of the SAIA request clarity of what is meant by "delay".	as reasonably possible after the failure has been identified. An amendment will be proposed to change the words "without delay" to "as soon as reasonably possible". 
245.	SAIA	55K(3) of STIA	A controlling company and any short-term insurer within the insurance group may not declare or pay a dividend to its shareholders— (a) while it fails or is likely to fail to comply with subsection (1); (b) if the declaration or payment would result in the insurance group failing or being likely to fail to comply with subsection (1). The exception of Cell Captives and its shareholders should be included.	Disagree. A cell captive insurer is supervised and regulated as one single insurance company with no legal ring-fencing of cells. If the cell captive insurer fails or is likely to fail to meet the financial soundness requirements it is currently not allowed to declare any dividends neither to the cell owners nor to the shareholder of the cell captive insurer.
246.	ASISA	65K(3) of LTIA	A controlling company[~~and any long-term insurer within the insurance group~~] may not declare or pay a dividend to its shareholders— (a) while it fails or is likely to fail to comply with subsection (1); (b) if the declaration or payment would result in the insurance group failing or being likely to fail to comply with subsection (1). Section 29(4) of the Act contains a similar provision in respect of long-term insurers and it is thus not necessary to be duplicated in this provision.	Noted. An amendment will be proposed to clarify that where the controlling company fails to maintain a financially sound position that it and the insurer may not declare dividends, irrespective of the fact that the insurer may be financially sound, unless the Registrar has approved the declaration.  However, the prohibition in respect of the insurer will be reconsidered. 
247.	SAIA	55L of STIA	Section 55L(3) – restriction and prohibition of certain activities or transactions by the Registrar: How are insurers to deal with existing transactions or activities? Or does this section only apply to future transactions and activities? Please clarify.	The section may also relate to existing transactions and activities. Disagree. Note that it is the controlling

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			Section 55L(4)(a): The insurer is required to submit a plan for approval to the Registrar. However, if the plan is not approved then the insurer may be faced with Regulatory action. It is submitted that this is unfair towards the insurer. Reference to the fact that if the insurer fails to submits a plan as required then sanctions may be imposed.	company that must submit the plan, not the insurer. The controlling company has already at the stage where a plan is submitted failed to meet the financial soundness requirements. Further, please note that consultations take place in respect of such plans and will continue to take place. Furthermore, the decision of the Registrar to not approve the plan is subject to appeal.
248.	eThekwini Municipality	65M of LTIA & 55M of STIA	It is submitted that a definition for 'capital add-on' should be included in the definitions section.	Disagree. The section clarifies what is intended.
249.	SAIA	55M(2) of STIA	(2) The Registrar must prescribe what constitutes a material inter-group transaction or risk exposure for purposes of subsection (1)(b). Comment: These prescriptions referred to above should be defined before the commencement of the bill as it could have significant negative consequences for insurers.	Noted. Draft subordinate legislation will be made available as soon as possible and will be subject to consultation with interested and affected parties. Also see comment box under par 10.3.2 of Discussion Document 1.
250.	ASISA	65M of LTIA	(1) The Registrar may, at any time, require a long-term insurer within an insurance group to hold capital in addition to the required capital of that long-term insurer, as a consequence of— (a) risks associated with any acquisition or disposal referred to under section 65G; or (b) any material inter-group transaction or risk exposure; or (c) risks associated with persons referred to in paragraph (c) of the definition of financial conglomerate that is part of the insurance group of which the long-term insurer is a part; or (d) risks associated with a long-term insurer or a controlling company not being listed on an exchange licensed under the Financial Markets Act, 2012 (Act No. 19 of 2012), and the long-term insurer on its own or the insurance group in combination accounting for a significant share of the relevant insurance market, as prescribed by the Registrar. (2) The Registrar must prescribe what constitutes a material inter-group transaction or risk exposure for purposes of subsection	Details of the capital add-on requirements and process are set out in Discussion Document 92. A one size fits all requirement cannot be applied. The capital add-on requirement will be different for each group and the risks that specific group is exposed to. Please note that consultations will take place. Furthermore, the decision of the Registrar to not approve the plan is subject to appeal.

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			(1)(b). ASISA members are of the opinion that the proposed section 65M is too vague. It refers to different types of risks in general. The limits within which additional capital may be required should be more specific given that it may have a significant impact on the business of the long-term insurers and its policyholders. Additional capital will bring about additional costs. What kind of risks will attract additional capital? How will the components to the risks be determined? How much additional capital will such risks attract? If these elements are not known, how will an insurer know that additional capital may be required if certain business decisions are taken? How will the risks of not being listed be identified and quantified? What outcome does the Registrar envisage in this respect? If additional capital is to be required as a result of the existence of certain types of risks, then these should be clearly identified and specified. A blanket authority should not be assigned in this respect.	
251.	Regent	65M of LTIA & 55M of STIA	"the registrar must prescribe what constitutes a material inter-group transaction". Materiality should be up to the board to determine. Suggest that this is deleted.	Disagree. To ensure consistency it is necessary to prescribe same.
252.	eThekwini Municipality	65M(1)(a) of LTIA & 55M(1)(a) of STIA	It is submitted that the word 'or' be deleted which appears after the semicolon in (a) and that the word 'or' be deleted which appears after the semicolon in (b).	Agreed. 
253.	eThekwini Municipality	65M(1)(a) of LTIA & 55M(1)(a) of STIA	This refers to acquisitions or disposals referred to in section 65G. It must be clarified if this also includes material acquisitions or material disposals?	By referring to section 55G of the STIA and 65G of the LTIA all acquisitions and disposals (including material ones) referred to those sections are included.
254.	eThekwini Municipality	65N(2) of LTIA & 55N(2) of STIA	This refers to returns. It is submitted that is must be clarified what type of returns are being referred to. Are they the consolidated returns as referred to in subsection (1)?	Disagree. It is clear that subsection (2) relates to subsection (1).
255.	eThekwini Municipality	65N(4) of LTIA & 55N(4) of STIA	The words 'compiled by a person nominated by the Registrar at the cost of the controlling company' must be moved to a new line, in order that such provision is applicable to both 65N (4)(a) and (b).	Disagree. The words relate to (b) only.
256.	eThekwini Municipality	65N(4) of LTIA & 55N(4)	This refers to 'in the medium and form'. It is submitted that the medium and form which must be followed is not clear in the context	Agreed. An amendment will be proposed to clarify that the "medium and form" may be

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		of STIA	of this subsection.	specified by the Registrar. 
257.	SAIA	55O(3)(a)(v)(aa) of STIA	"enter into cooperation agreements with regulatory authorities, which agreements, amongst others, include procedures for— (aa) the exchange of information on an ongoing basis and in emergency situations; " The SAIA requests that "emergency situations" is defined.	Emergency situations refer to matters that affect the financial soundness of cross border insurers and groups or matters that relates to the financial stability of the financial system. We are of the opinion that the word need not be defined.
258.	SAIA	55O(3)(b)(v) of STIA	"(v) coordinate crisis management preparations; and" The SAIA requests that "crisis management" is defined.	Noted. Crisis management relates to actions necessary to address the matters referred to directly above. Consideration will be given to using the same terminology in these instances. 
259.	SAIA	55O(3)(b)(vi) of STIA	(vi) proactively share information on insurance groups.''. Comment: The SAIA is uncertain as to whether this refers to "insurance groups" or "conglomerates" or both.	Noted. See definition of financial conglomerate – it is a type of insurance group and is therefore included in this provision. The provision relates to other insurance groups as well.
260.	ASISA	65O New Part VIIA	(3)(a) The Registrar must, in respect of insurance groups, together with the regulatory authorities of any person that is part of an insurance group— (iv) participate in formal or informal structures for cooperation and coordination amongst regulatory authorities responsible for and involved in the supervision of different components or parts of insurance groups (such as supervisory colleges); and (v) enter into cooperation agreements with regulatory authorities, which agreements, amongst others, include procedures for— (cc) convening regular meetings between the group supervisor and relevant regulatory authorities, including supervisory colleges; and (3)(b) In circumstances where the Registrar is the group	Noted. See ICP 23 read with ICP 25 in respect of the group supervisor and its roles and responsibilities. ICP 25 sets out the requirements for determining who the group supervisor of an insurance group will be. The interaction, cooperation and coordination of activities and responsibilities amongst supervisors are done on a confidential basis and can therefore not be transparent to the insurer / insurance group. Also see ICP 3. In respect of the capital add-on, the decision to impose same is subject to PAJA. Further note that details on capital add-ons are provided for in Discussion Document 92, which has been published for comments by

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			supervisor, the Registrar must— (ii) act as the key coordinator, convener and chairperson of meetings and supervisory colleges; If group supervision is to take place in conjunction with other regulatory authorities including foreign regulatory authorities, the construct thereof and implications for insurers need to be specified. What will the responsibilities of a group supervisor be? How will this affect the obligations of insurers? It is believed that the insurer should have an opportunity to participate in the process of determining group supervisor. The actions of the Registrar in this respect should be transparent. ASISA members are of the opinion that setting a capital add-on is a supervisory power aimed at ensuring an adequate level of required capital, thereby protecting policyholders' interests and presenting a level playing field; and furthermore that this power should be used as a corrective measure and not as a punitive one, in the context of exceptional circumstances. It is submitted that the following must be taken into consideration: a) The setting of a capital add-on should follow due process. The registrar should give proper consideration to whether a capital add-on is an adequate supervisory measure, taking into account the position of the insurance group concerned. In this regard, we raise the following: • That all the relevant steps (such as the identification of an issue, the assessment of the issue and the calculation of an add-on if appropriate) have been followed • That the results from the steps have been properly documented • That any relevant conclusion or measure by the registrar have been shared with the insurance group concerned and that the insurance group has been given the opportunity to present its reviews on these conclusions or measures within an appropriated timeframe b) The setting and the amount of capital add on should be reviewed more frequently than annually and removed once the	the SAM Structures. The group supervisory framework is referred to in Discussion Document 1 and has also been published for comments by the SAM Structures. Further detail of the group supervisory framework will be dealt with in the subordinated legislation and the group reporting requirements. In respect of the interim group reporting requirements the proposals have been field tested within some of the members of the Insurance Groups Task Group under the SAM Structures.

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			deficiency has been rectified.	
261.	SAIA	64(1)(a) and (b) of STIA - Offences	by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: ‘‘(a) contravenes or fails to comply with a provision of a notice, directive [or], request or **guideline** referred to in section 4[(3),](4), (9) or [(5)(a)(i)] (13), 8(1)(c), 21(2) or 26(2);’’; The SAIA does not agree with the inclusion of the reference to “guidelines” in subsection 36 (c) (a) as a requirement to be complied with as suggested by this subsection. Guidelines are open for interpretation, and cannot be considered binding nor can it be regarded as legislation. Guidelines should merely be a “guide” and not a rule. It is proposed that this suggested amendment be reconsidered	Agreed, an amendment will be proposed to refer to an interpretation guideline. Please see responses at 26 and 27 above. 
262.	SAIA	64(1)(c) of STIA - Offences	by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs: (b) or (5), 16(2), [23(1),] 27(1), 43(1), 44, 46, 48 or 48A;’’; and Comment: Section 45 as it currently stands in the Short Term Insurance Act has been omitted from this list, without being listed in the amendments. Clarty is sought on whether this was an oversight.	Section 45 was not included in this provision in the past, only in section 65. Consideration will be given to include section 45. 
263.	SAIA	65 of STIA - Offences	It is uncertain what approach the Registrar will adopt when imposing penalties. Insurance Groups are defined in respect of a Group of companies. Will each company within the Group be sanctioned? Will the offending company in the Group be sanctioned? Similarly the reference to Board of Directors. To which Board is this referring to? Clarity to be provided on these aspects. If it is individual offending company within the Group then such must be reflected in the wording.	Noted. An amendment will be proposed to refer to the controlling company of the insurance group. 
264.	SAIA	65(1)(a) of STIA -	by the substitution for the section heading of the following heading:	Noted. An amendment will be proposed to refer to the members of the board of directors

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		Offences	‘‘Offences by short-term insurers, insurance groups or its board of directors’’; Comment: Does “Board of Directors” refer to the “Board” or to “Directors”. It is unclear.	(individually or collectively). 
265.	Regent	66(1)(a) of LTIA & 64(1)(a) of STIA - Offences	The section includes guidelines - This should be deleted. A guideline is not binding and should not be interpreted as being binding- it should be given its ordinary grammatical meaning.	Noted. Interpretation guidelines must be complied with until such time as a Court attaches a different interpretation to the subject matter of the interpretation note. See comment 44.
266.	Lion of Africa	66(1)(a) of LTIA & 64(1)(a) of STIA - Offences	The section includes guidelines - This should be deleted. A guideline is not binding and should not be interpreted as being binding- it should be given its ordinary grammatical meaning.	Noted Interpretation guidelines must be complied with until such time as a Court attaches a different interpretation to the subject matter of the interpretation note. See comment 44.
267.	ASISA	66 and 67 of LTIA	(1) A long-term insurer [which], an insurance group or its board of directors, who—‘ (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2),[(3) or] (4), (9) or (13), 22(1) or (2), 27(1), 31(1), 35(1) or (2)(a) or 36(2) or (3); (b) contravenes or fails to comply with a provision of section 7(1)(b), 8(2), 14D(1) to (5), 16(1), 17, 18, [23(1) or (2),] 25(1), 29(3), 36(1), 44(1), 45, 48 (1), 49, 49A, 54 or 55(1); (3) An insurance group which— (a) contravenes or fails to comply with a provision of a notice, directive or request referred to in section 4(2) or (4), 22(1) or (2), 27(1), 65F(2), 65L(1) or (2) or 65N(3); (b) contravenes or fails to comply with a provision of section 18, 65E(2), 65G(1), 65K(2) or 65L(3) or (4), shall be guilty of an offence and liable on conviction to a fine not exceeding R5 million. (4) An insurance group who contravenes or fails to comply with section 24, 26 (1) or (2) or 65K(1), shall be guilty of an offence and	Agreed. The necessary amendments will be proposed (also in respect of the amount of the fine). 

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			liable on conviction to a fine not exceeding R10 million. As it is proposed subsections (1) and (3) will apply to insurance groups in respect of sections 4(2), 4(4), 22(1) or 22(2) and 27(1). This duplication may cause confusion as to which penalty will apply.	
268.	ASISA	Transitional and implementation provisions 39	The holding companies of all insurance groups must within one month of the date on which this section takes effect, submit to the Registrar – (a) a list of all persons that are part of the insurance group— (i) the name and address of the person; (ii) the purpose, extent and other particulars of the interest; and (iii) such other information as may be required by the Registrar; and Clarity is required in respect of the interest referred to in subsection (a)(ii). This section should not become effective until all the details in respect of insurance groups are known.	An amendment will be proposed to clarify that this relates to the interests that each entity in the group has in respect of other entities within the group.  Noted.
269.	SAIA	Transitional and implementation provisions 39	Details of all intra-group transactions and risk exposures as required by the Registrar. The Registrar will need to indicate the format and the details of what is required as this could be a vast amount of information that will not be used or useful.	Noted. See the recommendation box under 10.3.2 of Discussion Document 1.
270.	SAIA	Transitional & implementation provisions 39	The holding companies of all insurance groups must within one month of the date on which this section takes effect, submit to the Registrar— The one month period is insufficient. The SAIA suggests a 6 months period in order to prevent non-compliance.	The timing proposal will be reconsidered. 
271.	eThekwini Municipality	Short title & commencement	It is submitted that the word ‘or’ be inserted after the word ‘sub-group’.	Agreed.

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		41(3)(b)(i)		
272.	SAIA	Short title & commencement 41(3)(b)(ii)	kind of long-term insurer, short-term insurer, insurance group or insurance sub-group, which may, for the purposes of this section, be defined either in relation to a category or type of long-term insurer, short-term insurer, insurance group, insurance sub-group or in any other manner. The term “kind” should be replaced with “type”	Disagree. Kind may be defined either in relation to a category or type of insurer, insurance group, insurance sub-group or in any other manner.
273.	SAIA	Short title & commencement 41(3)(b)(ii)	A delay or exemption under subsection (2) may— (a) apply to long-term insurers, short-term insurers, insurance groups or insurance sub-groups generally; or (b) be limited in its application to a particular— (i) long-term insurer, short-term insurer, insurance group or insurance sub-group; (ii) kind of long-term insurer, short-term insurer, insurance group or insurance sub-group, which may, for the purposes of this section, be defined either in relation to a category or type of long-term insurer, short-term insurer, insurance group, insurance sub-group or in any other manner. The SAIA supports the above; however would like to raise the concern that unfair advantages should not be the consequence of the above.	Noted.
PROPOSED AMENDMENTS TO FAIS ACT				
274.	BASA	Schedule – Act No 37 of 2002	**Procedure used to table the amendment** The Insurance Laws Amendment Bill seeks to amend the Long and Short Term Insurance Acts 52 and 53 of 1998. However, included in the Schedule to the Bill is the proposal to make a significant amendment to the definition of Intermediary Services as defined in the FAIS Act.	Disagree, the main purpose of the proposed amendment to the definition of ‘intermediary service’ is to provide clarity and legal certainty and the impact thereof on industry should be minimal. As regards the deletion of section 1(3)(b)(ii),

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			We submit that the inclusion in the Insurance Laws Amendment Bill of the amendment of a significant definition in the FAIS Act is inappropriate as the intent of the Amendment Bill is to amend the Long and Short Term Insurance Acts 52 and 53 of 1998, as per the Memorandum to the Bill. The proposed amendment to the definition of intermediary services is considerably more far reaching and will have consequences on all financial services providers (rather than just Long and Short Term Insurers).	see proposed amendment thereof.
275.	BASA	Schedule – Act No 37 of 2002	**The amended definition of intermediary services** It is our understanding that the FSB seeks to regulate the activities of the product suppliers in instances where they may sell a product directly to a client, hence the removal of the words "for or on behalf of a client or product supplier" and other references to product supplier in the definition. The removal of subparagraph (ii) of subsection (3)(b) further strengthens this intent with the specific exclusion (from the ambit of intermediary service) of intermediary services rendered by product suppliers authorised under a particular law to conduct business as a financial institution and where such services are regulated by another law. The wider definition and its consequent impact on the banking industry is significant and the deletion of the exemption for product suppliers rendering intermediary services from the ambit of the Act provides challenges for the banking industry as discussed below.	The Act currently provides that a product supplier selling its own products through its employees must be licensed under the Act, and its employees must be registered as "representatives" unless such selling is regulated by the law under which product suppliers are authorised to conduct business as a financial institution. The proposed amendment to the definition of 'intermediary service' merely clarifies the current position. However, it is correct that the intention is to regulate product suppliers when directly selling their own products irrespective of whether or not that activity is regulated elsewhere to avoid regulatory arbitrage, improve consistency and to ensure equal treatment of persons performing the same activity and by doing so, creating level playing fields. It is not clear why the proposed amendments will have an impact on banks as the exclusion in section 1(3)(b)(ii) does not apply to them, because the Banks Act does not regulate the selling of products by Banks. For that reason, all four of the major Banks are currently authorised as financial services providers under the Act to render advice and intermediary services in respect of deposits.
276.	BASA	Schedule – Act No 37 of 2002	**The impact and consequences of the proposed changes on the banking industry**	Banks, in their capacity as product suppliers, have increasingly taken the view that they are not subject to the Act when engaging, through

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			The inclusion of "deposit as defined in section 1(1) the Banks Act" as a FAIS product has caused various debates over the last 11 years, and will once again be problematic within the context of the proposed amendment. FAIS regulates the rendering of financial advisory and intermediary services to clients in respect of defined financial products. Included in the definition of financial product is "a deposit as defined in section 1(1) of the Banks Act 94 of 1990". Insofar as the product, which may be offered by an institution is not a defined product, it matters not whether advice is given or an intermediary service rendered, the FAIS Act does not apply in respect of those products. Banks have taken the approach that you cannot provide an intermediate service on your own product and therefore regard the FAIS Act as not applicable where rendering an administrative service on own products. The proposed definition, by removing the clarification that an intermediary service occurs only in instances where the service is **done for or on behalf of the product supplier** expands the definition of intermediary service, and makes it into a broad catch-all definition. It is submitted that the proposed amendment changes the normal meaning of "intermediate", which according to the Oxford English Dictionary means "coming between two things in time, place, character". The predicted impact of the proposed amendment would be that all individuals who by their actions cause a client to enter into **any** transaction in respect of a financial product would need to be registered under the FAIS Act. Effectively this would mean all activity conducted by a financial firm may fall under FAIS, despite such activities being regulated by other legislation. The Banking Association had various discussions with the FAIS department during the course of 2002 and 2003 regarding the challenges of the application of the deposit definition in the FAIS Act. The FSB obtained input from the Office of the Registrar of Banks and the following was confirmed by the FSB at the time: • Credit card accounts used purely as a credit facility i.e. the client has a debit balance, are not subject to the provisions of the FAIS Act. However as a credit card has the inherent facility of being	their employees or tied agents, in the direct marketing of their own products to clients. Their view is based, mainly, on the argument that employees cannot be regarded as being separate from the product supplier and as such, there is no intermediation. The FSB does not agree with the banks' interpretation of the definition. It has always been the view of the FSB that a person employed by a product supplier acts for or on behalf of a product supplier, and is not the product supplier itself and is also not an organ of the product supplier. An employee is a party acting between the product supplier and the client, although any resulting contract will be between the product supplier and the client. The relationship between the product supplier and its employee who renders the intermediary service is one of agency, the details of which will be found in the employment contract or some other document. See attached memorandum with detailed motivation. The Act recognises that the definition of 'intermediary service' includes activities that a product supplier carries out in its capacity as such, and which may be regulated by the legislation governing product suppliers in that capacity (primary legislation). Therefore, the Act provides for an exclusion to product suppliers under section 1(3)(b)(ii) when rendering intermediary services, and such activity is regulated under their primary legislation. The Act aims to regulate the furnishing of advice and rendering of intermediary services in respect of financial products, to further consumer protection. The exclusion of product suppliers and their employees from the Act, to

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			utilised as a savings account, credit card products should for purposes of FAIS, fall into the specific code applicable to deposits shorter than a 12 month period. • Current accounts are included in the products regulated by the Act, but only to the extent that they are subject to the specific code of conduct for short-term deposit taking business. We submit that the above interpretation and application was not intended by the legislature when the FAIS Act was passed and we include some of our arguments (at the time) below in order to demonstrate the practical implications of the now wider definition of intermediary services, particularly in relation to the "deposit" definition in the FAIS Act.	the extent they are not regulated elsewhere, could never have been intended, as such an interpretation would defeat the purpose and objective of the Act. It will further create an imbalance in the application of the law to persons performing the same regulated activity. The FSB fails to understand why the proposed deletion of the exclusion of product suppliers as provided for in section 1(3)(b)(ii) has or will have any impact on banks as the they are not meeting the peremptory requirements of the exclusion namely: the intermediary service performed must be regulated by the law governing the banks. It is common cause that the Banks Act does not regulate the rendering of intermediary services by banks, as such the exclusion does not apply to them. It is further correct that the amendment changes the normal meaning of "intermediate". This, however, is not a problem as the Act will assign its own meaning to the term. The main purpose of the proposed amendment to the definition of 'intermediary service' is to bring about legal certainty, to avoid regulatory arbitrage and to close regulatory gaps.
277.	BASA	Schedule – Act No 37 of 2002	**The definition of "deposit"** The main part of the definition reads as follows in the Banks Act: " … an amount of money paid by one person to another person subject to an agreement in terms of which- i. an equal amount or any part thereof will be conditionally or unconditionally repaid, with or without a premium, on demand or at specified or unspecified dates or in circumstances agreed to by or on behalf of the person making the payment and the	The reference to the definition of 'deposit' is irrelevant for purposes of the proposed amendments. However, the banks are referred to the 'Guidance Note: Deposit in the FAIS Act' issued by the Registrar of Financial Services Providers (Registrar) in 2004 which guidance followed the communication from the Registrar as referred to. The Guidance Note made it clear that money lending transactions eg. loans, credit cards and mortgage bonds,

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			person receiving it; and ii. no interest will be payable on the amount so paid or interest will be payable thereon at specified intervals or otherwise." It is clear that the main part of the definition includes much more than money lending, as the money paid does not have to be unconditionally repayable to be included in the definition. Furthermore, it is sufficient if only a portion of the amount is repayable, whether conditionally or unconditionally. The definition continues and excludes certain payments from the concept of "deposit". **Products outside the scope of the FAIS Act** • Unless the product falls within the definition of "Financial Product" it is outside the scope of FAIS. Loans, credit cards and mortgage bonds for example, are not financial products as defined in FAIS. Insofar as the bank is lending the money or providing a facility, all are money-lending transactions. • The Usury Act used to cater for money-lending transactions and now the NCA provides adequate regulation for credit agreements. **Products outside and inside the FAIS Act?** A problem arises where the facility is used or managed in a manner different from that for which it was initially intended or provided. A classic example would be in respect of a so called "access bond" where money is deposited into the bond and the facility is, in essence used as a savings or deposit account. A further example would be where a credit card is utilised as a savings account and a credit balance is maintained. Insofar as these products are utilised in this manner and insofar as the bank is obliged to repay an amount or any part thereof on demand, a "deposit" would be involved. Does the product now become a financial product for purposes of FAIS where previously it was not one? *A fortiori* must the bank or person dealing with that account now bring itself or himself within the ambit of the Act and the Codes whereas prior to the using of this facility in this way it or he was outside the purview of the Act? And what if it continuously changes its nature from credit to savings facility and back to credit	fall outside the ambit of financial product as defined in the Act as such transactions do not constitute a deposit as defined in section 1 of the Banks Act. The rendering of financial services in respect of such products is therefore not subject to the Act. The Registrar was of the view (which view was informed by the Registrar of Banks) that products such as access bonds and revolving credit facilities on vehicle finance facilities did not appear to be deposits as contemplated by the definition of a deposit in terms of the Banks Act, for as long as the payments made into these facilities resulted in the defrayment of the relevant principle debt. Once the principle debt has been defrayed, the pre-existing debtor/creditor relationship will be extinguished. Any further amounts received thereafter by the former creditor from the former debtor would constitute deposits in the hands of the former creditor. The Registrar further indicated that payments on credit card accounts that were utilised by the holders thereof as savings accounts, and "single facility accounts", which reflect credit values could constitute deposits. As such, the Act would be applicable where providers advise clients to save in, for example, their credit card accounts. In light of the above, the FSB disagrees with the Banks' contention that credit facilities, per se, are subject to the Act. However, subsequent to the above Guidance Note the National Credit Act came into operation. Reasonable grounds may now exist to exempt Banks from the Act if credit facilities, even though they may have credit values, are regulated under the National

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			facility? Would the banker or person concerned keep having to change his hat? Yet a further example would be a so–called ”single facility account” where a client holding various accounts with a bank is offered a facility which will enable him to consolidate all these accounts into a single account with his fixed property as security for the outstanding balance. To illustrate: A client has a student loan, credit card, vehicle finance, overdraft, and home loan with a bank. Essentially, all the separate accounts will be closed and the client will hold a single account that will be the total value of all the balances. Into this account the client will deposit his salary, bonus and the like. Any debit orders would also be deducted from this account. Every month an “instalment” is deducted by the bank. Surplus funds can be withdrawn on demand by cheque, debit card or ATM. In order to qualify for this combined or single facility the client would have to ave a loan with the bank. This account is different from the two examples above in that it is used for the purpose for which it is provided-a single facility. Its availability is however predicated upon a loan. **Possible Solutions** The proposed broadened definition of intermediary services coupled with the deletion of s3(b) in the Insurance Laws Amendment Bill may draw the scenarios mentioned above within the ambit of the FAIS Act resulting in all banking staff dealing with such products having to meet the FAIS registration and compliance requirements. We understand that there is a need to provide more comprehensive market conduct regulation and that products and services such as the above may have to be regulated in a different manner, and we comment further on this aspect in 5 infra. We suggest the following approaches with regard to banking products in order to alleviate the unintended consequences which may follow: i. First, where the primary product (to the extent that a primary product can be identified) is not a financial product as defined in the Act, no “use” of the product as a savings account will bring it within the reach of the Act as a deposit. Put differently, if by its nature and by its purpose for which it was granted, it is	Credit Act.

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			out, it remains out, regardless of how it is utilised going forward. ii. Secondly, notwithstanding the nature of the primary product, if the "resultant product" falls within the definition of "deposit" it falls within FAIS. iii. A third possibility is that insofar as a *transaction* is quite distinct from a *product*, any transactions conducted in respect of the product should not taint or change the nature of the product. If the product is not a financial product within FAIS it does not become one, notwithstanding that a number of transactions that may have been concluded in respect of it. The Act can surely not require that advice be rendered each and every time a transaction is concluded where the transaction results in a credit balance. iv. We respectfully submit that an approach similar to what is submitted in i and iii *supra* should be adopted as it would best serve the purpose and intent of the FAIS Act and it would provide certainty with regard to the ambit of 'financial product' as defined in FAIS. To this extent we request the Regulator to provide the necessary exemptions/guidance to give effect to the proposals.	
278.	BASA	Schedule – Act No 37 of 2002	**What is the mischief to be rectified by the proposed amendment?** By changing the definition, it is assumed the FAIS Regulator wishes to further protect consumers. The proposed amendment removes the distinction between services provided as a product provider and products provided through intermediary services, which from a practical point of view require different levels of protection for the consumer. It is important that before the definition of "intermediary services" is changed that a clear understanding of the mischief the National Treasury and the FSB wish to alleviate is understood, in order for the appropriate legislative change to be made. The proposed amendment is too broad. It is critical that National Treasury identify the specific abuse it wishes to remedy and focus its amendments on that abuse. It is submitted that in regards to products and actions that do not fall under FAIS in the banking industry, there is currently protection for depositors. Specifically in the retail banking space, the banking industry is subject to the provisions of the Consumer Protection Act where	It is necessary to address the application of the specific legislation referred to by BASA under this paragraph before responding to its question relating to the mischief the FSB would like rectify. Application of other legislation **Consumer Protection Act (CPA):** Banks are not subject to the CPA when rendering financial services as defined in the Act. The CPA excludes from its jurisdiction any person who furnishes advice and renders intermediary services as defined in the Act. Therefore, consumers of financial services rendered by banks do not have the protection of the CPA as their protection lies under the

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			applicable. There is protection for lenders under the National Credit Act. Banks are also implementing Treating Customers Fairly which will strengthen market conduct in the sector. Further the banking industry subscribes to the Code of Banking Practice which is enforced through the Ombudsman of Banking Services under the auspices of the Financial Services Ombud Shemes Act (No 37 of 2004). The Code of Banking Practice provides commitments by banks in relation to customer entitlements, access to banking services, principles of conduct, provision of credit, payment services and dispute resolution. In regards to financial markets, investors are protected under the Financial Markets Act. This Act is applicable to the activities that occur in the securities space and the FSB is currently in the process of completing the codes of conduct that will regulate the behaviour of all players in the securities and trading space, ensuring consumers are protected. There are many retailers that offer a unique store card that may be loaded with a positive balance and it is argued that the nature of such cards is similar to a transactional bank account that is linked to a card and it cannot be the intention of the FSB for these retailers to be registered for intermediary services. The JSE rules set out what Authorized Users must adhere to when they sell and/or execute trades in instruments that are traded on the exchange. Further they provide for the measures Authorized Users must have in place to deal complaints and the channels available for escalation. (We are soon to see similar rules come into force for standardized Over The Counter (OTC) derivatives. Alignment with FAIS Codes of Conduct is under discussion) Currently FAIS legislation contains an exemption for Authorized Users. The allusion to the removal of the exemption for Authorized Users in order to bring all aspects of consumer protection within the ambit of FAIS as an interim measure however is a cause for concern. The implication would be that Authorized Users would have to put a large amount of additional FAIS compliance infrastructure in place. This would be a costly and burdensome exercise and we have to question what actual additional protection will be afforded. Further it could be said, with respect, that the	Act. **National Credit Act (NCA):** The NCA only applies to Banks insofar it provides credit facilities to clients. As indicated above, the provision of credit is not regulated under the Act. **Financial Markets Act (FMA):** Authorised users, clearing houses, central securities depositories or participants and exchanges are specifically exempted from the Act in terms of section 45 to the extent that the rendering of financial services is regulated under the FMA. The FSB does not intend to amend that section. **Code of Banking Practice (CBP):** The CBP is not law. It is a voluntary Code and not enforceable by any regulatory authority. The Code is further just one component used by the Ombud of Banks when adjudicating on a complaint when consider redress. **"Mischief"** The Act's main objective is the protection of consumers of financial services. It is an important objective in all financial services markets but particularly in South Africa where the policy, legal and regulatory environments are being changed in an effort to improve access to financial services. As access increases, less literate, more vulnerable consumers are likely to enter the market. Therefore, it is of paramount importance that all persons who render financial services to consumers are adequately regulated. The Act, in achieving its objective, has a functional approach, aimed at regulating two types of activities, namely: advice and intermediary services (financial services). It is irrelevant in which capacity a person renders

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			market expertise in respect of Authorized Users currently sits within the Capital Markets division of the FSB. It is beneficial to clients to have market conduct measures put in place by a regulator who fully understands the nuances of the underlying business and who can mitigate any underlying unintended consequences.	the services. For this reason the Act is applicable "in addition" to any other law. In fact, it is even applicable to the State and public entities. The FSB is of the view that where a product supplier renders an 'intermediary service' through its employees that such product supplier must be licensed under the Act and its employees must be registered as "representatives" unless the exclusion referred to in section 1(3)(b) applies. However, industry increasingly contends, case in hand, that it is not necessary for a product supplier who directly, through its employees, markets its own products to obtain authorisation under the Act as such employees cannot be regarded as being separate from the product supplier. The effect of the above is that the activities performed by a product supplier that constitute the direct selling of its financial products to clients are seen as being excluded from the definition of intermediary services. Therefore, so it is argued, the exclusion referred to in section 1(3)(b)(ii) is not applicable. The result thereof is that product suppliers when selling their products to clients are excluded from the Act, irrespective whether or not that activity is regulated by any other law. Clearly, this could not have been the intention. Below are some further difficulties arising from industry's interpretation: • Call centres operated by employees of product suppliers "hard selling" products do not have to comply with the requirements of the Act. This, inter alia, include requirements relating to honesty and integrity, competency, conflicts of interest

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				and conduct. Clients, when dealing directly with product suppliers, are not afforded the protection of the Act, as would have been the case if they had interacted through an intermediary. • Complicated derivative instruments are being sold to clients without the protection of the Act, as these products are mainly being sold by the issuers of the instruments. The growth and proliferation of the Internet has caused an increase of derivative instruments being offered and sold to retail clients. Issuers increasingly reach potential clients from all walks of life through the internet. • Unequal treatment of persons performing the same activity eg, an independent intermediary must comply with the Act and meet competency requirements when selling financial products, whilst employees of product suppliers performing the same activity do not have to meet such requirements. In addition, the definition requires that for a service to qualify as an 'intermediary service', it has to be rendered in a tripartite situation in which a product supplier figures. (The service must result in a transaction in respect of a financial product with a product supplier.) The effect is that financial services rendered in respect of financial products in the second-hand market, is excluded from the Act. No transaction is concluded with a product supplier, although the product involved is a financial product as defined in the Act.
279.	BASA	Schedule – Act No 37 of 2002	**Future legislative regime** The FAIS department of the FSB indicated that there is an intention to abolish dual regulation and put an end to the scope for regulatory arbitrage. The concept is sound and understood. We	National Treasury recently expressed South Africa's commitment to a global financial regulatory reform agenda aimed at strengthening financial stability. These commitments, inter alia, entail a stronger

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			anticipate a consolidation of all consumer protection legislation under the Twin Peaks regulatory framework. The proposed amendment to the intermediary service definition in FAIS has significant operational impact which may result in a negative consequences for the labour force of the banking industry. The proposed amendment would require a substantial transitional period to ensure that banks have "Key Individuals" as required by FAIS, along with the appropriate "fit and proper" staff members. The time period it would take to get through all the transitional arrangements coincides with the Twin Peaks timetable. It is submitted that by the time the transitional period is completed Twin Peaks will be in place, and will impose further regulatory requirements on financial institutions, hence it is not practical to use resources to comply with an interim measure which once met will be replaced by a new regulatory measure. Before the definition to intermediary services is amended it is recommended the FSB complete the exercise of establishing the new regulatory regime for securities. We have to challenge, however, whether there are significant gaps at this stage. Will clients really be benefitted by an infrastructural overhaul or will it simply result in additional costs and delays in operability for very little or no additional protection? The rules for the various markets are deliberately different and tailored to cater for the particular nature of the market, e.g. in the stock market there cannot be lengthy delays as the market movement could be detrimental to the client. A one-size fits all approach will lead to unintended consequences and confusion in complying with various over-lapping laws. It is essential that laws are clearly formulated to ensure certainty and to enable effective compliance.	regulatory framework and effective supervision. It further indicated that, in general, no provider of financial services should be allowed to operate outside the regulatory framework. Banks, effectively, are requesting to be excluded from any requirements and regulatory oversight in respect of the rendering of intermediary services to consumers. If allowed, it would frustrate the purpose and objective of the Act. The FSB does not understand the banks' assertion that the proposed definition would have significant impact on their labour force. As indicated above, all the major banks are currently authorised under the Act to render advice and intermediary services in respect of the financial product: Deposits. Banks, therefore, already are compliant with all the requirements of the Act including having the required key individuals and representatives that render intermediary services in respect of Deposits. It is further important to note that although a bank may render an intermediary service through its employees, not all such employees would be required to be appointed as representatives due to the exclusions provided for in the definition of 'representative'. It is only those employees who render an intermediary service that requires judgement on the part of the employee and leads a client to any specific transaction in respect of a financial product that are required to be appointed as representatives. The FSB does not agree that the proposed amendments would necessitate infrastructural overhaul for the reasons detailed above. The overhaul of the market conduct legislation under the Twin Peak regulatory framework,

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				realistically, is not going to happen overnight. In the meantime the issues referred to above remain unresolved with untenable consequences for consumers.
280.	BASA	Schedule – Act No 37 of 2002	**Other consequences of the proposed changes** Offshore Activities **-** There are some instances where execution and administration services have been outsourced to offshore braches of product providers. These services were excluded in terms of the previous definition of "intermediary services". What is contemplated here? Will offshore branches and entities have to register for an intermediary services license? Will they be able to rely on the local license, but be compelled to register staff members here? If that is the case what are the expectations around monitoring and supervision of those activities? The deletion of s1(3)(b)(ii) of the FAIS Act may impact negatively on OTC derivatives and exchange regulated activities and we need clarity on questions such as: • Would this result in Authorized Users under the Financial Markets Act (FMA) having to register as intermediary services providers under FAIS? • If so, it would be in conflict with s45 of the FAIS Act which specifically grants an exemption for certain industries. • Furthermore, it will result in dual regulation under FAIS and the FMA, particularly in relation to clearing and settlement. The proposed removal of the reference to product supplier in the definition of intermediary services does not mean that product suppliers no longer exist, or can no longer exist as separate entities from Intermediaries. If the amendment is interpreted to mean that product suppliers are included in the definition of an intermediary, then the following items will fall within the definition of product supplier and the associated entities will be subject to FAIS (and will have to register): • bonds issued by public companies, public state-owned enterprises, the South African Reserve Bank and the	**Offshore activities:** It is unclear what administration services are being referred to. Further clarity must be provided. **OTC derivatives**: Authorised users are exempted in terms of section 45 of the Act. No amendment is proposed in respect of that section. **Issuing of financial products:** It is not the intent to include the mere issuing of a product under the Act. A proper interpretation of the definition of 'intermediary service' indicates that the activity of merely issuing a product does not constitute the rendering of an intermediary service as the definition requires that the act being performed must be the direct cause of the client entering into a transaction. The mere issuing of a product cannot be regarded as the direct cause of a client entering into a transaction in respect of such product. **Services rendered by banks in respect of insurance policies:** Banks when rendering services in respect of insurance policies are not doing so in their capacities as product suppliers but as intermediaries in that they act as a go-between between the client and another product supplier. The proposed amendments have no impact on the current position of banks under the Act when rendering financial services in the abovementioned capacity. **"Maintain and administer the product by storing the same":** The mere holding of a contract of eg. insurance, does not constitute

	NAME	SECTION[1]	COMMENT	RESPONSE
			Government of the Republic of South Africa; • securities (locally and internationally) issued by public companies; • participatory interests in a collective investment scheme, and units or any other form of participation in a foreign collective investment scheme • Pension Funds; and • the JSE Securities Exchange. Although the issuing of shares is covered under the definition of product supply, the all inclusive definition of intermediary service may inadvertently include actions on the part of listed companies which are not strictly issuing actions, such as corporate actions. Bond offerings via the JSE may also be affected by inadvertently including the incidental actions performed by a bond issuer around the provision of the product becoming an intermediary service. Over and above this, the unlisted or OTC share market would be affected in that companies regulating the sale of their own shares through a secondary market would be considered as offering an intermediary service. If companies need to become FAIS registered for the incidental activities around the issue of shares be it via the JSE or OTC markets, entities would need to perform ongoing checks ito sec 7(3) of the FAIS Act before placing a trade, thereby unduly delaying a process in what could be a very time sensitive market. The amendments will affect the home loan process of including an insurance/assurance quotation in the customer quote or financing the Homeowners Insurance premiums through the home loan, unless the argument that the bank is acting as a conduit for the customer to receive the quotation will be acceptable to the regulator. A credit life policy is attached to a credit contract and therefore although no advice is provided, the amendment could result in a view that the Business Unit is FAIS impacted as “we maintain and	the act of “keeping in safe custody” of a financial product.

	NAME	SECTION[1]	COMMENT	RESPONSE
			administer the product by storing same". Certain divisions/companies within a bank group are the product suppliers in respect of insurance products, and should the amended definition be accepted it will result that all staff concluding loan agreements within a bank must be FAIS accredited even if no advice or intermediary services is concluded because ultimately a transaction is concluded.	
281.	BASA	Schedule – Act No 37 of 2002	The consequences of amending the definition of intermediary services as proposed are far reaching within the banking industry as banks have aligned their operational structures and business models over the last 10 years to comply with the FAIS requirements, using inter alia, the specific wording of the definition to position various parts of their business and service offerings. The Banking Association understands that the National Treasury undertook to engage with stakeholders in a workshop to unpack and discuss the applicable challenges and we welcome this opportunity to engage constructively.	The FSB maintains that it clearly was the intention of the legislator to include the activities of product suppliers under the Act, but only insofar such activities are not regulated under other laws. The proposed amendment will provide the necessary clarity. The rationale for the deletion of the exclusion provided from the Act to product suppliers in section 1(3)(b)(ii) is to avoid regulatory arbitrage, improve consistency and to ensure equal treatment of persons performing the same activity and by doing so, creating level playing fields.
282.	ASISA	Schedule – Act No 37 of 2002	This clause (which is only contained in the Schedule) proposes to amend the definition of —intermediary service‖ in the Financial Advisory and Intermediary Services Act, 2002 (FAIS Act), to remove references to product suppliers and to delete the exemption for product suppliers rendering intermediary services from the ambit of the FAIS Act. The FAIS Act has application in respect of a number of financial products and not only in respect of insurance products. The proposed amendments to the FAIS Act are not necessitated by any proposed amendments to the Long-term or Short-term Insurance Acts as contemplated in this Insurance Laws Amendment Bill. ASISA members are of the opinion that it is inappropriate to seek to introduce the proposed amendments to the FAIS Act in this Bill. It may be perceived to attempt to circumvent proper consultation in respect of these amendments. Persons subject to the FAIS Act who do not have any insurance interests but may have a significant interest in the amendment of provisions of FAIS, are likely to be unaware of the proposed amendments to the FAIS Act included in this Bill. It is submitted that any amendments to the FAIS Act which are not entirely related to Insurance Laws should be proposed in terms of	Disagree. **Consultation process:** The FSB and NT are consulting with industry (not only the insurance industry) regarding the proposed amendments. In addition, industry is being consulted through the parliamentary process. **Proposed amendment to section 1(3)(b)(ii):** Section 1 of the Act is amended by- **(a)** the substitution of the subparagraph (b)(ii) of subsection 3 with the following subparagraph: "(ii) an intermediary service, <u>other than the acts referred to in</u>

	NAME	SECTION[1]	COMMENT	RESPONSE
			either an amendment to the FAIS Act or in terms of a General Laws Amendment Bill which clearly records that it is intended to propose amendments in terms of the FAIS Act.	paragraph (a) of that definition or the buying, selling or otherwise dealing in a financial product, rendered by a product supplier - (aa) who is authorised under a particular law to conduct business as a financial institution; and (bb) where the rendering of such service is regulated by or under such law;". See attached memorandum with detailed motivation for proposed amendments.
283.	SAIA	Schedule – Act No 37 of 2002	The Explanatory Memorandum does not contain any detailed explanation as to why amendments to the FAIS Act are necessary. The Explanatory Memorandum merely indicates that the amendment is sought in order to clarify the intent and purpose of certain market conduct and prudential provisions and to address gaps in the legislative framework. What intent and purpose is intended to be clarified? What are the gaps in the legislative framework? How do these relate to the Insurance Laws and no other financial sector laws?	Noted, see proposed amendment to section 1(3)(b)(ii), response to consultation process and attached memorandum with detailed motivation for proposed amendments.
284.	Professional Provident Society	Schedule – Act No 37 of 2002	We are surprised by this move. We were actually waiting for the alignment of the definition of intermediary service between the Long-term and Short-term Insurance Acts. It is the intention of NT and FSB that when an insurer assesses claims it needs to do so through personnel who are representatives in terms of the FAIS Act? This could prove disastrous for personnel that have never had to meet fit and proper requirements because of the exemption and would now suddenly be burdened with requirements that they have never contemplated. There could be a possibility of job loses etc. Furthermore, the FSB has not consulted with the industry on why this amendment is required and also what the initial motivation was when the exemption was granted. We recommend that the NT and FSB reconsider this provision or	Noted, see proposed amendment to section 1(3)(b)(ii), response to consultation process and attached memorandum with detailed motivation for proposed amendments.

	NAME	SECTION[1]	COMMENT	RESPONSE
			take the industry into confidence about the rationale and the need for this change. There should be a process of consultation on this as well.	
285.	Regent	Schedule – Act No 37 of 2002	Although the current situation in relation to inconsistent definitions in FAIS and the STIA AND LTIA is undesirable, it is submitted that a change to the definition in FAIS requires wider industry consultation and input- It is unclear from the ILAB what the Regulator"s intention is in effecting the proposed amendments. Cognizance needs to be taken of the impact on existing agreements. See the Tristar judgement which confirms that the term Intermediary should be given the meaning ascribed to it in ordinary language. An intermediary is general understood to be someone who acts between two or more persons as ago between. A deviation from this generally accepted definition is extreme and requires careful consideration. The Memorandum attached to the ILAB states that the amendments which relate to the FAIS ACT are intended to delete the exemption for product suppliers rendering intermediary services from the ambit of the Act.	The purpose of definitions is to clarify what is meant by a word or phrase used in a specific context. In this instance, the Act. A definition may result in a deviation from a word's normal dictionary meaning and must then be interpreted to have the new meaning assigned to it. Noted, see proposed amendment to section 1(3)(b)(ii), response to consultation process and attached memorandum with detailed motivation for proposed amendments.
286.	AIG South Africa Limited	Schedule – Act No 37 of 2002	ILAB proposes to extend the definition of Intermediary Service Provider to include insurance companies. The deletion of sub-section 3(b) (ii) will effectively mean that all employees within an insurance rendering intermediary services will have to be registered as Representatives, requiring adherence to the requirements set out in the FAIS Act, which will include having the set minimum experience, qualifications, Regulatory Examination qualification and possibly having to work under supervision. We request the National Treasury to reconsider its position and allow a process of engagement with the insurance industry to enable issues around the challenges and rationale to be tabled and discussed.	Noted, see proposed amendment to section 1(3)(b)(ii), response to consultation process and attached memorandum with detailed motivation for proposed amendments.
287.	LT Ombud	Schedule – Act No 37 of	Clause 40, through the Schedule, proposes to amend the definition of "intermediary service" in the Financial Advisory and Intermediary	Noted, see proposed amendment to section 1(3)(b)(ii), response to consultation process

	NAME	SECTION[1]	COMMENT	RESPONSE
		2002	Services Act, 2002 (FAIS Act), to remove references to product suppliers and to delete the exemption for product suppliers rendering intermediary services from the ambit of the FAIS Act. It appears that this amendment would have the effect that all the activities conducted by a product supplier which are mentioned in the definition of "intermediary service", such as processing of claims, would in future fall within the ambit of the FAIS Act. These activities would currently be regulated in terms of the Long-term Insurance Act in respect of long-term insurers. The Ombudsman for Long-term Insurance would currently have jurisdiction over any complaints by complainants regarding these activities of long-term insurers. It could be argued that the proposed amendment would have the effect that any complaints about these activities carried out by an insurer would in future fall within the jurisdiction of the FAIS Ombud. The Fais Ombud has jurisdiction over complaints as defined in the FAIS Act. It is not clear from the Explanatory Document to the Bill that this was the intention of the proposed Bill. It is indicated in the Explanatory Document that amendments are sought to strengthen regulatory requirements in respect of governance, risk management and internal controls, to enhance the FSB's supervision, effect technical amendments and address gaps in legislation. The amendment through the Schedule appears to be fall outside this intention particularly as it affects not only insurers. From a procedural point of view it is also unusual that such a far reaching amendment to the FAIS Act would appear in the Schedule of the Insurance Laws Amendment Bill.	and attached memorandum with detailed motivation for proposed amendments.

MOTIVATION FOR PROPOSED AMENDMENT TO SECTION 1 OF THE FINANCIAL ADVISORY AND INTERMEDIARY SERVICES ACT, 2002

INTRODUCTION

1. The FSB proposed amendments to section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act), with the objective of closing regulatory gaps that are increasingly being exploited by certain sectors in the financial services industry to circumvent regulation under the Act.

2. The proposed amendments are as follows:
Section 1 of the Act is amended by-

2.1. the substitution in subsection (1) for the definition of "intermediary services" of the following definition:

> **""intermediary service"** means, subject to subsection (3)(b), any act other than the furnishing of advice, performed by a person **[for or on behalf of a client or product supplier]** -
>
> (a) the result of which is that a client may enter into, offers to enter into or enters into any transaction in respect of a financial product **[with a product supplier]**; or
>
> (b) with a view to -
>
> (i) buying, selling or otherwise dealing in (whether on a discretionary or non-discretionary basis), managing, administering, keeping in safe custody, maintaining or servicing a financial product **[purchased by a client from a product supplier or in which the client has invested]**;
>
> (ii) collecting or accounting for premiums or other moneys payable by the client **[to a product supplier]** in respect of a financial product; or
>
> (iii) receiving, submitting or processing the claims of a client <u>in respect of a financial product</u> **[against a product supplier]**;"; and

2.2. the deletion of subparagraph (ii) of subsection (3)(b) which provides as follows:

> *"1(3) For the purposes of this Act-*
> *(b) intermediary service does not include –*
> *(i) …;*
> *(ii) an intermediary service rendered by a product supplier -*
> *(aa) who is authorised under a particular law to conduct business as a financial institution; and*
> *(bb) where the rendering of such service is regulated by or under such law;".*

3. The primary effect of the amendment to the definition of "intermediary services" is that it removes the requirement that the person performing the activities referred to therein must do so in an agency capacity. It further removes the requirement that the service has to be rendered in a tripartite situation in which a product supplier figures.

4. The amendment to section 1(3)(b)(ii) proposes the removal of the exclusion afforded to product suppliers (issuers of financial products) from the ambit of the Act when rendering intermediary services, and such services are regulated by or under their own governing laws.

5. The proposed amendments effectively bring product suppliers rendering intermediary services within the ambit of the Act. It also clarifies that intermediary services need not be rendered "on behalf" of a client or product supplier, but could be rendered by the product supplier itself acting through its employees or organs.

LEGAL UNCERTAINTY

Definition of 'intermediary service'

6. Product suppliers have increasingly taken the view that they are not subject to the Act when engaging, through their employees, in the direct marketing of their own products to clients. Their view is based, mainly, on the argument that employees cannot be regarded as being separate from the product supplier and, as such, there is no intermediation.

7. In addition, it is argued that a product supplier does not perform the activities on behalf of a client in an agency capacity that requires it to act in the interest of the client, but does so in the furtherance of its own interest.

8. It is correct that the definition of 'intermediary services', as it currently reads, contemplates a person who is interposed between a 'client' on the one hand, and a 'product supplier' on the other hand, representing either.[4] Product suppliers, based on their contention that their employees do not act separately from the legal *persona* of the product supplier, is relying on the absence of a "go between" to exclude product suppliers from the Act, when selling their products directly to clients.

9. Since inception of the Act it has been the official view of this Office that a product supplier rendering an 'intermediary service' through its employees or so-called tied agents must be licensed under the Act, and its employees must be registered as "representatives" unless such service is regulated by the law under which they are authorised to conduct business as a financial institution.[5]

10. The definition of "intermediary service,' if properly analysed, means the following:

    10.1. An employee employed by a product supplier acts for or on behalf of a product supplier, and is not the product supplier itself and is also not an organ of the product supplier. An employee is a party acting between the product supplier and the client, although any resulting contract will be between the product supplier and the client. The relationship between the product supplier and its employee who renders the intermediary service, is one of agency, the details of which will be found in the employment contract or some other document.

    10.2. AJ Kerr in the Law of Agency states that if there is an obligation on an agent to further his principal's interests it will frequently be found that the contract is one of mandate or of employment. He further quotes from Wille and Millin's Mercantile Law of South Africa that *"A man's ordinary servant or business employees are very often his agents"*.[6]

    10.3. That agency is, for purposes of FAIS, no different from the type of agency created when the product supplier mandates or appoints an independent intermediary to render an intermediary service for or on its behalf. Only the source of agency is different. Both agents are intermediaries or "brokers".

    10.4. Only an organ of a company, for example a director, acts as the company, not as an agent. By contrast, an employee of the company is an agent.[7] "Legal authority for the proposition that an employee is the employer's agent may be found in Sizabantu Electrical Construction v Guma and others [1999] JOL 4503 (LC) and Banda v Gamegone (Pvt) Ltd & another [2003] JOL 12298. In the former case employees are aptly described as "internal agents of the employer".

11. The Act further recognises that the definition of 'intermediary service' includes activities that a product supplier

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[4] See Tristar Investments v The Chemical Industries National Provident Fund (455/12) [2013] ZASCA 59 (16 May 2013).
[5] See section 1(3)(b) of the Act.
[6] For a legal precedent see *Mine Workers Union v Brodrick 1948 4 SA 959 (A)* and see also *Colonial Mutual Life Assurance Society Ltd v Macdoland 1931 AD 412 at 426*.
[7] Legal authority for the proposition that an employee is the employer's agent may be found in *Sizabantu Electrical Construction v Guma and others [1999] JOL 4503 (LC)* and *Banda v Gamegone (Pvt) Ltd & another [2003] JOL 12298*. In the former case employees are aptly described as "internal agents of the employer".

carries out in its capacity as such, and which may be regulated by the legislation governing product suppliers in that capacity (primary legislation). Therefore, the Act provides for an exclusion to product suppliers under section 1(3)(b)(ii) when rendering intermediary services, and such activity is regulated by their primary legislation.

12. The Act aims to regulate the furnishing of advice and rendering of intermediary services in respect of financial products, in the furtherance of consumer protection. The exclusion of product suppliers and their employees from the Act, to the extent they are not regulated elsewhere, could never have been intended, as such an interpretation would defeat the purpose and objective of the Act. It will further create an imbalance in the application of the law to persons performing the same regulated activity.

13. The Act, in achieving its objective, has a functional approach, aimed at regulating two types of activities, namely: advice and intermediary services (financial services)[8]. It is irrelevant in which capacity a person renders the services. For this reason the Act is applicable "in addition" to any other law.[9] In fact, it is even applicable to the State and public entities.[10]

14. Although product suppliers are exempted from the Act when rendering intermediary services subject to meeting certain requirements, they are not exempted when furnishing advice. But for the exemption, product suppliers must apply and comply with the Act.[11]

15. In addition, the Act provides that authorisation granted to a product supplier is supplementary to, but separate from, the supplier's authorisation under a particular law as a financial institution.[12]

16. The purpose of the proposed amendment to the definition of 'intermediary service' *inter alia*, will bring about legal certainty.

17. The effect of the industry's interpretation of the definition of 'intermediary service', is that the direct marketing by a product supplier of its own financial products is not regarded as the rendering of an intermediary service and therefore not subject to the Act. It then follows that section 1(3)(b)(ii) of the Act is also not applicable.

18. Therefore, product suppliers (when selling their products) do not have to comply with the Act, irrespective of whether or not their activities are regulated by any other law. Clearly, this could not have been the intention.

19. Below are some further difficulties arising from industry's interpretation:

    19.1. Call centres operated by employees of product suppliers "hard selling" products do not have to comply with the requirements of the Act. This, *inter alia*, include requirements relating to honesty and integrity, competency, conflicts of interest and proper conduct. Clients, when dealing directly with product suppliers, are not afforded the protection of the Act, as would have been the case if they had interacted through an intermediary.

    19.2. Complicated derivative instruments[13] are being sold to clients without the protection of the Act, as these products are mainly being sold by the issuers of the instruments. The growth and proliferation of the Internet has caused an increase of derivative instruments being offered and sold to retail clients. Issuers increasingly reaching potential clients from all walks of life through the internet.

    19.3. Unequal treatment of persons performing the same activity eg, an independent intermediary must comply

[8] See definition of 'financial service' in section 1(1) of the Act.
[9] See section 1(6) of the Act.
[10] See section 1(5) of the Act.
[11] The Act, in terms of section 12(1), provides for the granting of exemptions to product suppliers that must be authorised under the Act from having to submit some or all of the information required from an applicant for a licence.
[12] See section 11(2) of the Act.
[13] Eg. Contracts for differences (CFDs), a margined, over the counter derivative instrument with an equity, index, commodities, currency or bond as its underlying asset, where the holder participates in market movements of the underlying asset. The risk of loss arising from trading in CFDs can be substantial. Market movements, in a relatively short time can result in the holder of the CFD sustaining more than the total loss of funds by way of the margin deposit.

with the Act and meet competency requirements when selling financial products, whilst employees of product suppliers performing the same activity do not have to meet such requirements.

20. In addition, the definition requires that for a service to qualify as an 'intermediary service', it has to be rendered in a tripartite situation. (The service must result in a transaction in respect of a financial product being concluded with a product supplier.) The effect is that financial services rendered in respect of financial products in the second-hand market,[14] is excluded from the Act. No transaction is concluded with a product supplier, although the product involved is a financial product as defined in the Act.

21. The Act's main objective is the protection of consumers of financial services. It is an important objective in all financial services markets but particularly in South Africa where the policy, legal and regulatory environments are being changed in an effort to improve access to financial services. As access increases, less literate, more vulnerable consumers are likely to enter the market. Therefore, it is of paramount importance that all persons who render financial services to consumers are adequately regulated.

Deletion of exclusion of product suppliers in terms of section 1(3)(b)(ii)

22. The deletion of the exclusion of product suppliers from the Act in section 1(3)(b)(ii) is to avoid regulatory arbitrage, improve consistency and to ensure equal treatment of persons performing the same activity, and by doing so, creating level playing fields.

23. Currently there are inconsistencies and lacunae in the sector specific legislation relating to the regulation of market conduct. These gaps create the possibility of regulatory arbitrage.

24. The suspensive conditions under section 1(3)(b)(ii) only require that intermediary service must be regulated by the law governing the product supplier. It is not a requirement for the services to be regulated to the same extent or at the same level as the Act. This results in the exclusion of product suppliers and their employees from the ambit of the Act when marketing their products to clients. In these instances they only have to comply with lesser market conduct requirements.

25. No other financial sector specific legislation provides for the regulation of intermediary services and more specifically the direct marketing by product suppliers of their own products to the extent that the Act does eg. the Act requires providers of financial services to adhere to onerous conflict of interest provisions, and to comply with specific fit and proper requirements, including honesty, integrity, experience, qualifications, regulatory examinations and continuous professional development.

26. It may be necessary to amendment subordinate legislation passed under other financial sector laws that also, possibly not to the same extent as in the Act, regulate the market conduct of product suppliers in order to avoid any potential conflicts between the Act and the other financial sector laws, such as the Policyholder Protection Rules made under the Long- and Short-term Insurance Acts.

[14] Eg. the trade in second-hand endowment policies and the on-selling of shares.