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GOVERNMENT NOTICE

Finance, Department of

Government Notice

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GOVERNMENT NOTICE

DEPARTMENT OF FINANCE

No. R. 1129

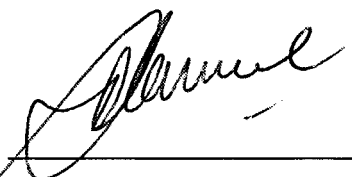
30 September 2004

NATIONAL TREASURY

POLICYHOLDER PROTECTION RULES (LONG-TERM INSURANCE), 2004

The Minister of Finance hereby under section 62 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), promulgates the Policyholder Protection Rules (Long-term Insurance), 2004, as set out in the Schedule.

These Rules come into operation on 30 September 2004.



TA Manuel, MP
Minister of Finance
Date:

SCHEDULE

POLICYHOLDER PROTECTION RULES (LONG-TERM INSURANCE), 2004

Section 62, Long-term Insurance Act, 1998

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PART I

DEFINITIONS

1. In these Rules "the Act" means the Long-term Insurance Act, 1998 (Act No. 52 of 1998), including the regulations promulgated under section 72 of the Act, "the FAIS Act" means the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), including any measure or decision referred to in the definition of "this Act" in section 1(1) of that Act, any word or expression to which a meaning has been assigned in the Act or the FAIS Act, bears, subject to context, that meaning and, unless the context otherwise indicates-

" **advertising** ", in relation to a direct marketer, means any written, printed, electronic or oral communication (including a communication by means of a public radio service), which is directed to the general public, or any section thereof, or to any client on request, by any such marketer, which is intended merely to call attention to the marketing or promotion of long-term insurance policies offered by the marketer, and which does not purport to provide detailed information regarding any such policy;

" **cancellation** ", in respect of a policy, or any part thereof, means an unilateral act of discontinuance of the policy, or any such part thereof, by the policyholder in accordance with these Rules;

“**commencement date**” means the date on which these Rules become binding, as determined and published by the Minister in accordance with section 62(5) of the Act;

“**direct marketer**” means an insurer who, in the normal course of business, carries on business in the form of direct marketing, but not in the capacity as an authorised financial services provider;

“**direct marketing**” means the marketing of a policy by way of telephone, internet, media insert, direct or electronic mail in a manner which includes the required transaction requirement pertaining thereto, but excluding any advertising ;

“**effective date**”, in relation to an insurance transaction, means the date on which the entering into, variation or termination of any such transaction becomes effective;

“**ensure**”, in relation to a person or body and any matter mentioned in a provision of these Rules, means to take any necessary steps in order that the clear objective of the provision is achieved;

“**fund policy**” means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;

“**insurance transaction**” means the entering into or termination of a policy and includes variations resulting in a change to the premium, benefits or the term of a policy excluding any contractually pre-determined or determinable variation;

“**insurer**” means a long-term insurer;

“**intermediary**” means a representative referred to in the Act, and a person who qualifies as an independent intermediary in terms of the definition thereof in regulation 3(1) of the Regulations, and with whom an agreement has been entered into by an insurer in compliance with Rule 5(1)(a)(i);

“**policy**” means a long-term policy ;

“**policyholder**” includes any prospective policyholder and individual members of a retirement annuity fund and preservation fund;

“previous Rules” means the Policyholder Protection Rules (Long-term Insurance), 2001, as published by GN No. R. 165 in *Gazette* No. 22085 of 23 February 2001;

“Regulations” means the Regulations under the Long-term Insurance Act, 1998, promulgated by GN R. 1492 of 27 November 1998;

“transaction requirement” means any application, proposal, order, instruction or other contractual information required to be completed for, or submitted to, an insurer by or on behalf of a policyholder and relating to an insurance transaction;

“writing” includes communication by telefax or any appropriate electronic medium that is accurately and readily reducible to written or printed form; and **“written”** has a corresponding meaning.

PART II

OBJECTIVE AND APPLICATION OF RULES

Objective

2. The objective of these Rules is to ensure that policies as defined in Rule 1 are entered into, executed and enforced in accordance with sound insurance principles and practice in the interests of the parties and in the public interest.

Application

- 3.1 These Rules, excluding Rules 11 and 13, do not apply to insurance business conducted between insurers.
- 3.2 Part III of these Rules only applies to an insurance transaction in respect of which the effective date is a date on or after the commencement date.
- 3.3 No provision of these Rules shall be construed as in any way affecting the duty of any person to comply with any applicable provision of the FAIS Act.

PART III

BASIC RULES FOR DIRECT MARKETERS

- 4.1 (a) A direct marketer must at all times render services honestly, fairly, and with due skill, care and diligence.
- (b) A direct marketer must–

-
- (i) in making contact arrangements, and in all communications and dealings with a policyholder, act honourably, professionally and with due regard to the convenience of the policyholder; and
 - (ii) at the commencement of any contact, visit or call initiated by the direct marketer clearly explain the purpose thereof.
 - (c) Representations made and information provided to a policyholder by a direct marketer–
 - (i) must be factually correct;
 - (ii) must be provided in plain language, avoid uncertainty or confusion and not be misleading;
 - (iii) must be adequate and appropriate in the circumstances of the relevant marketing, taking into account the level of knowledge of the policyholder;
 - (iv) must, where provided in writing or by means of standard forms or format, be in a clear and readable print size, spacing and format;
 - (v) must, as regards all amounts, sums, values, charges, fees, remuneration or monetary obligations mentioned or referred to therein, be reflected in specific monetary terms: Provided that where any such amount, sum, value, charge, fee, remuneration or monetary obligation is not reasonably pre-determinable, its basis of calculation must be adequately described; and
 - (vi) need not be duplicated or repeated to the same policyholder unless material or significant changes affecting that policyholder occur, or the relevant direct marketer renders it necessary, in which case a disclosure of the changes to the policyholder must be made to the policyholder without delay before a transaction is concluded.
 - (d) The direct marketer must disclose to the policyholder the existence of any circumstance which gives rise to an actual or potential conflict of interest in relation to direct marketing, and take all reasonable steps to ensure fair treatment of the policyholder.
 - (e) Direct marketing must be rendered in accordance with the contractual relationships and reasonable requests or instructions of the policyholder, which must be executed as soon as reasonably possible and with due regard to the reasonable interests of the

policyholder which must be accorded appropriate priority over any interests of the direct marketer.

- (f) The direct marketer must not deal in any policy for own benefit, account or interest where the dealing is based upon advance knowledge of pending transactions for or with policyholders, or on any non-public information the disclosure of which would be expected to affect the costs of such policy to the policyholder.

4.2 (a) A direct marketer must have appropriate procedures and systems in place to-

- (i) record all verbal and written communications relating to the direct marketing to a policyholder as are contemplated in these Rules;
- (ii) store and retrieve transaction documentation and all other documentation relating to the policyholder; and
- (iii) keep the policyholder records and documentation safe from destruction.

(b) Records may be kept in an appropriate electronic or recorded format, which are accessible and readily reducible to written or printed form.

(c) Disclosure records and documentation pertaining thereto must, in any particular case, be kept for a period of at least five years after termination, to the knowledge of the direct marketer, of the relevant policy or, in any other case, after completion of the relevant marketing process, and must be available timeously upon request to the registrar for inspection, and copies thereof must at the request of a policyholder be furnished to such holder.

4.3 A direct marketer must, when rendering direct marketing to a policyholder, furnish the policyholder with the following particulars at the earliest reasonable opportunity but prior to the conclusion of a relevant insurance transaction: Provided that where provided orally, it must be confirmed in writing within 30 days:

- (a) its business or trade name, and, unless contact was initiated by the policyholder, its telephone contact details;
- (b) telephone contact details of the public officer of the direct marketer;
- (c) name, class or type of policy involved and a reasonable and appropriate general explanation of the principles of the relevant

contract and any information that would reasonably be expected to enable the policyholder to make an informed decision;

- (d) the nature and extent of benefits for the policyholder, manner of deriving or obtaining, or payment or furnishing thereof, and the extent to which the policy is readily realisable or the funds concerned are accessible;
- (e) any restrictions on or penalties for early termination or withdrawal from the policy, or other effects, if any, of such termination or withdrawal;
- (f) charges and fees to be levied against the policy including the amount and frequency thereof and, where the policy has an investment component, the net investment amount ultimately invested for the benefit of the policyholder;
- (g) commission, consideration, fees, charges or brokerages payable to the direct marketer (if any) by the policyholder or by any other person;
- (h) on request, the past investment performance of the policy, where applicable, over periods and at intervals which are reasonable with regard to the type of policy involved;
- (i) nature and extent of monetary obligations assumed by the policyholder (including any anticipated or contractual escalations, increases or additions), manner of compliance therewith and consequences of non-compliance;
- (j) where provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
- (k) concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
- (l) what cooling-off rights are offered and procedures for exercise thereof;
- (m) any material investment or other risks associated with the policy;
- (n) details of manner of instituting claims under the relevant policy;
- (o) any guaranteed minimum benefits or other guarantees where appropriate; and
- (p) details of manner of lodging complaints, and particulars of the Long-term Insurance Ombudsman, including that the

Ombudsman is available for advice on complaints in respect of claims or other matters which have not been satisfactorily resolved by the relevant direct marketer.

- 4.4 A provision of a Rule in this Part is not applicable to a direct marketer in any case where a compliance duty in respect of the same matter is imposed on the direct marketer by, in terms or by virtue of any other law.

PART IV

AGREEMENTS WITH INTERMEDIARIES

Agreements

- 5.1 (a) (i) An insurer must, where an agreement has been entered into with an intermediary in connection with the insurance products of that insurer, furnish the intermediary with a written copy setting out the terms and conditions thereof: Provided that an insurer may on or after the commencement date only enter into such an agreement if the intermediary has, where lawfully required been issued with a licence for the rendering of intermediary services in terms of section 8 of the FAIS Act, or is, where lawfully required, a representative as contemplated in that Act of any such licensee.
- (ii) An agreement referred to in subparagraph (i) which has been entered into under Rule 15.1 (a) of the previous Rules, as it existed prior to the commencement date, lapses on a date 90 days after that date if the relevant person is not on the lastmentioned date such a licensee or such a representative.
- (b) Any such agreement also lapses-
- (i) on any date on which the agreement is lawfully terminated by the parties, irrespective of whether the termination has been mutually agreed upon, or is effected by any one party by notice to the other; or
- (ii) (aa) on the date when a licence held by the person concerned, referred to in paragraph (a)(i) becomes inoperative by virtue of the application to the person as licensee of any provision of section 9 of the FAIS Act relating to provisional or final suspension of the relevant licence, section 10 of that Act relating to withdrawal of the licence or section 11 of that Act relating to lapsing of the licence; or

- (bb) in the case of any such person acting as a representative contemplated in the FAIS Act, on the date on which the mandate or authority granted in terms of the FAIS Act to the representative by the licensee concerned, is lawfully terminated, or any such representative becomes debarred by virtue of section 14 of the FAIS Act to act as a representative.

- 5.2** An insurer must, within a reasonable time after being requested to do so, provide any person with whom an agreement contemplated in Rule 5.1 has been entered into, with all information reasonably required by such person to comply with any disclosure or other requirements binding on such person by virtue of any law.

PART V

RULES ON CANCELLATIONS OF POLICIES AND COOLING-OFF

Cancellations of policies and cooling-off

- 6.1** A policyholder may-

- (a) in any case where no benefit has yet been paid or claimed or an event insured against has not yet occurred; and
- (b) within a period of 30 days of receipt of the summary contemplated in section 48 of the Act, or from a reasonable date on which it can be deemed that the policyholder received the summary referred to above,

cancel any insurance transaction, excluding any policy or variation which only lasts for 30 days or less, by written cancellation notice sent to the insurer. All premiums or moneys paid by the policyholder to the insurer up to the date of receipt of the cancellation notice or received at any date thereafter in respect of the cancelled or varied policy, shall be refunded to the policyholder, subject to the deduction of the cost of any risk cover actually enjoyed and any market loss where the market value of the investments made has decreased in the intervening period due to prevailing market conditions.

- 6.2** An insurer shall ensure that it complies with the request for cancellation received after the 30 day notice period, but not later than 60 days after the effective date where the policyholder can prove that a cancellation notice not received by the insurer, was completed in good faith and communicated to the insurer within the 30 days notice period.
- 6.3** Where a policy can in law not be cancelled, or is by virtue of its terms and nature not capable of being cancelled, such fact shall be disclosed to the

policyholder by the intermediary involved or the insurer before entering into of any insurance transaction in respect of the policy.

PART VI

RULES ON FUND POLICIES

Fund policies

- 7.1 (a) An insurer shall, in addition to the disclosures made under Rule 4, issue and deliver a fund policy to either the principal officer of the fund, the trustees of the fund or any person managing the fund, not later than six months after the effective date, or the commencement date of such policy if such policy commences after the effective date.
- (b) (i) Notwithstanding the provisions of paragraph (a), an insurer may, with the approval of the registrar and subject to such conditions as the registrar may determine, postpone the issue of a fund policy.
- (ii) The insurer's application for such approval shall be submitted to the registrar in the form determined by the registrar.
- 7.2 A fund policy shall incorporate the conditions relating to discontinuance and shall include the following:
- (a) if the fund is to receive a cash sum, the basis of calculation of such cash sum and the conditions applicable to the payment thereof.
- (b) if the fund is to receive assets, the basis on which the value of such assets will be determined and the conditions applicable to any such receipt;
- (c) if the fund is to receive a paid-up policy, the basis of calculation of the paid-up value and the conditions applicable to the payment of the paid-up benefits;
- (d) if the fund is to receive any benefit other than that contemplated in paragraphs (a) and (c), full details of such benefit; and
- (e) where applicable, full details of all charges to be levied on termination.

PART VII**ASSISTANCE BUSINESS GROUP SCHEMES****Definitions and commencement**

8.1 In this Part, subject to the introductory provisions of Rule 1, and unless the context indicates otherwise-

“administrative work” means work in connection with the handling of enquiries, maintaining administrative records, the receipt of premiums and processing of claims to the extent agreed to in terms of a written mandate between the insurer and the administrator under an assistance business group scheme;

“administrator” means a person who has a written mandate from an insurer to do administrative work in respect of a specific assistance business group scheme and who is licensed as a financial services provider in terms of, or who is a representative as contemplated in, the FAIS Act;

“agreement” means the written agreement referred to in Rule 9;

“assistance business group scheme” means the provision of policy benefits under an assistance policy to a group where-

- (a) individual persons are the policyholders;
- (b) no individual underwriting takes place;
- (c) the individual person whose life is insured, is directly or indirectly paying premiums;
- (d) the policy may be cancelled by either party to the policy ; and
- (e) the policy has term cover only;

and **“scheme”** has a corresponding meaning;

“group” means two or more people who have entered, on a group-underwriting basis, into a policy with an insurer through an administrator who has been provided with a mandate by the insurer to facilitate these policies.

8.2 The provisions of this Part come into operation on a date three months after the commencement date.

Written agreement between insurer and scheme or administrator

9. An insurer may only conduct business with an assistance business group scheme or an administrator if the insurer has entered into a written agreement with such a scheme or administrator: Provided that a policy involved will not be void merely due to any such agreement not having been entered into.

Contents of agreement

10. The agreement entered into as required by Rule 9 must contain at least the following clauses:
- (a) the premium rates to be charged by the insurer inclusive of commission payable by the insurer to an intermediary involved;
 - (b) any fees to be added by any other party;
 - (c) if premiums are to be received by any person other than the insurer, the agreement must contain at least the following:
 - (i) the period within which such premiums will be paid over to the insurer;
 - (ii) that the insurer has the authority to at any time audit the books of the person receiving the premium;
 - (iii) that the premium moneys so received be handled as trust money;
 - (d) the scheme or administrator must provide the insurer with at least the following detail:
 - (i) names of policyholders and beneficiaries; and
 - (ii) identity numbers of policyholders;
 - (e) if the scheme or administrator has the authority to pay claims, setting out the scope of the scheme's or administrator's powers to do so and the circumstances under which it may be done.

Cancellation of agreement

11. Cancellation of the agreement by either party shall be void unless the new insurer who takes over the assistance business group scheme has issued a written confirmation to the previous insurer confirming that the new insurer will be the underwriter to the scheme, except if the insurer complies with the requirements as set out in Rule 13.

Void provisions

- 12.1** Any new waiting periods to be imposed by a new insurer on existing policies will be void.
- 12.2** Changes in the terms and conditions of the assistance policies by the new insurer will be void except for premiums. Terms and conditions may only be changed by the new insurer with the consent of each individual policyholder.

Information to be provided to new insurer

- 13.** After an insurer has received confirmation from the assistance business group scheme or administrator that it so wishes to move policies to a new insurer, the insurer must provide the following information to the new insurer as soon as possible but not longer than 30 days after receipt of the confirmation by the scheme or administrator:
- (a) the information referred to in Rule 10(d);
 - (b) number of policyholders on the scheme by type and amount of cover;
 - (c) aggregate amount of premium;
 - (d) claims history of the scheme (for the past three years if available);
 - (e) copy of the master policy;
 - (f) other information required by the new insurer.

Compliance with disclosure requirements

- 14.** The new insurer must within 30 days after the inception of the assistance policies under the scheme or administrator comply with any disclosure or other requirements binding on the insurer by virtue of the Act, these Rules, the FAIS Act or any other law.

Conditions for cancellations

- 15.** A cancellation of an agreement referred to in Rule 11 will only be effective if-
- (a) the registrar has beforehand been informed of the cancellation; and
 - (b) all individual policyholders have to the satisfaction of the registrar been notified of such cancellation.

PART VIII**ADDITIONAL INSURER DUTIES****Rejection of claims**

- 16.1** An insurer shall ensure that, where it rejects a claim for a benefit under a policy or where it disputes the quantum of the benefit claimed, the person entitled to claim the benefit is notified in writing of the reasons for the rejection or the calculation of the quantum, as the case may be. The person entitled to claim the benefit may within not less than 90 days after the date of such notification, make representations to the insurer in respect of the insurer's decision, but nothing in this subrule shall be construed as limiting any contractual or other right any party may have in regard to any claim for policy benefits.
- 16.2** If a claim is rejected or a quantum is disputed as contemplated in rule 16.1 on behalf of an insurer by a person other than that insurer, such other person must provide the rejection notice contemplated in that rule, provided that such rejection notice must also contain the name and contact details of the insurer and state that any recourse or enquiries must be directed directly to that insurer.

Signing of blank or uncompleted forms

- 17.** No insurer or intermediary may in connection with an insurance transaction require, permit or allow a policyholder to sign any blank or partially completed form necessary for the purpose of the transaction, where another person will be required, permitted or allowed to fill in other required detail, or conclude any such transaction where any such signing and providing of detail have occurred.

Policy loans and cessions

- 18.** An insurer must disclose to a policyholder-
- (a) on entering into a policy loan-
 - (i) the interest of the loan at the time of entering into;
 - (ii) whether the interest rate on the loan fluctuates (if applicable); and
 - (iii) the repayment arrangements of the loan e.g. the amount the policyholder undertakes to pay in discharge of obligations;
 - (b) quarterly the amount of the policy loan and accrued interest in relation to the value of the policy;

- (c) quarterly the interest rate applicable to the policy loan and any changes thereto;
- (d) when the loan is about to equal the value of the policy;
- (e) when the benefits under the policy cease as a result of the policy loan equaling the value of the policy; and
- (f) on receipt of notification of a cession-
 - (i) the fact that the cession is recorded in the insurer's records;
 - (ii) the nature of the cession i.e. whether it is an outright cession or a cession in securing a debt; and
 - (iii) the name of the cessionary.

PART IX

MISCELLANEOUS

Waiver of rights and particulars of Long-Term Insurance Ombudsman

19.1 No insurer or intermediary may request or induce in any manner a policyholder to waive any right or benefit conferred on the policyholder by or in terms of a provision of these Rules, or recognise, accept or act on any such waiver, and any such waiver is null and void.

19.2 An insurer must within a reasonable period in writing inform a policyholder of a policy issued by the insurer on or after the commencement date, of details of any available internal complaint resolution systems and procedures, as well as full particulars relating to the Long-term Insurance Ombudsman.

Penalties

20. An insurer or intermediary who contravenes or fails to comply with a provision of these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 66(1)(c) or 67(1)(c), as the case may be, of the Act.

Repeal and transitional provision

21.1 The previous Rules are hereby repealed.

- 21.2** Anything done under, in terms or by virtue of any provision of the previous Rules is deemed, unless clearly inappropriate, to have been done under, in terms or by virtue of a corresponding provision of these Rules.

Short title and commencement

- 22.** These Rules are called the Policyholder Protection Rules (Long-term Insurance), 2004, and come into operation on a date as determined and published by the Minister in accordance with section 62(5) of the Act.
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