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GOVERNMENT NOTICE

DEPARTMENT OF FINANCE

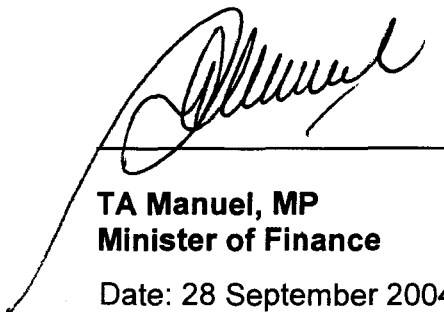
No. R. 1128

30 October 2004

POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

The Minister of Finance hereby under section 55 of the Short-term Insurance Act, 1998 (Act No. 53 of 1998), promulgates the Policyholder Protection Rules (Short-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: 28 September 2004

SCHEDULE

POLICYHOLDER PROTECTION RULES (SHORT-TERM INSURANCE), 2004

Section 55, Short-term Insurance Act, 1998

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PART I

DEFINITIONS

1. In these Rules "the Act" means the Short-term Insurance Act, 1998 (Act No. 53 of 1998), including the regulations promulgated under section 70 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 short-term insurance policies offered by the marketer, and which does not purport to provide detailed information regarding any such policy;

"**commencement date**" means the date on which these Rules become binding, as determined and published by the Minister in accordance with section 55(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, including the entering into thereof, 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 the entering into of any policy, means the date on which any such policy is entered into or varied;

“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;

“enter into”, in respect of a policy, includes the renewal or variation of any such policy: Provided that in the case of monthly policies only the renewal after the entering into of the policy effected during every consecutive twelfth month of the currency of the policy shall qualify as a renewal referred to in this definition; and **“entering into”** has a corresponding meaning;

“insurance party involved” means, in relation to the entering into of a policy with the policyholder concerned or any other matter connected with such policy, any insurer or intermediary, as the case may be, directly involved in such entering into, or in such other matter;

“insurer” means a short-term insurer who issues a policy, and includes any representative, referred to in the Act, of the insurer;

“intermediary” means a person who qualifies as an independent intermediary in respect of a policy in terms of the definition thereof in section 1(1) of the Act, and with whom an agreement has been entered into by an insurer in compliance with Rule 7.1(a)(i);

“policy” means any short-term policy where the policyholder is a natural person acting otherwise than solely for the purposes of the person’s own business; but excluding a reinsurance policy;

“policyholder” includes a prospective policyholder;

“previous Rules” means the Policyholder Protection Rules (Short-term Insurance), 2001, as published by GN No. R. 164 in *Gazette* No. 22084 of 23 February 2001;

“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 a policy, including any amendment thereof or variation thereto;

“variation”, in relation to a policy, means any variation of the premiums or benefits of the policy, excluding any periodic variation in terms of a

contractually determined inflation-connected formula, or otherwise in terms of fixed contractually determined provisions;

“**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 Part III of these Rules only applies to the entering into of a policy in respect of which the effective date is a date on or after the commencement date.
- 3.2 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.

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- (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 marketing 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 the direct marketer, 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 by 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 entering into of a policy, 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;
 - (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) commission, consideration, fees, charges or brokerages payable to the direct marketer (if any) by the policyholder or by any other person;
 - (g) 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;
 - (h) where provision is made for increase of premiums, abbreviated disclosures of such contractual increases;
 - (i) concise details of any special terms and conditions, exclusions, waiting periods, loadings, penalties, excesses, restrictions or circumstances in which benefits will not be provided;
 - (j) details of manner of instituting claims under the relevant policy; and
 - (k) details of manner of lodging complaints, and particulars of the Short-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

RULES ON VOID PROVISIONS AND FORMAT

Void provisions

- 5.1** A provision of a policy is void to the extent that it provides expressly or by implication—
- (a) that in connection with any claim made under the policy, the policyholder may be obliged to undergo a polygraph, lie detector or truth verification, or any other similar, test or procedure which is furnished or made available by the insurer or any other person in terms of an arrangement with the insurer and which is conducted under the control of the insurer or such other person;
 - (b) for an inducement of any nature for a policyholder to voluntarily agree to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy;

- (c) that where a policyholder under other circumstances than those contemplated in paragraph (b) of this Rule voluntarily agrees to undergo a test or procedure envisaged in paragraph (a) of this Rule where the policyholder submits a claim under the policy, and the policyholder fails to pass such test, the claim will be rejected or the policy will become void merely as a result of such failure to pass the test or procedure;
 - (d) that in the event of any dispute arising under the policy, the dispute can only be resolved by means of arbitration;
 - (e) that an insurer may reject a claim because a premium was not paid on due date, if payment was made during the period of grace referred to in Rule 7.5, whether or not the payment was made prior to the event giving rise to the claim.
- 5.2** Rule 5.1(d) shall not be construed as rendering void a provision of a policy that the parties may, after a dispute under the policy has arisen, voluntarily agree to submit the dispute to arbitration or, in the absence of such a provision, as voiding any agreement between the parties to that effect.

General format of policies

- 6.1** An insurer shall ensure that a policy is only issued to a policyholder concerned if the provisions of the policy are recorded, as regards layout, letter types and spacing, in an easily readable manner and if the wording of every provision of the policy has a reasonably precise ascertainable meaning.
- 6.2** 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 Short-term Insurance Ombudsman.

PART V

GENERAL RULES

Agreements

- 7.1** (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 10.1 (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: Provided that any such lapsing shall not be effective unless-
 - (aa) all policyholders holding current policies entered into by the insurer through the relevant person referred to in paragraph (a)(i) have been given prior written notice of the termination in accordance with Rule 7.3(b) (which apply with the necessary changes) by either the insurer or the person involved, or both; and
 - (bb) both insurer and the relevant person are beforehand satisfied that all reasonable steps have been taken for such information to reach all such policyholders;
 - (ii) (aa) on the date when a licence held by the person concerned 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.
- (c) An insurance party involved, shall ensure that in the case of any lapsing contemplated in paragraph (a)(ii) or (b)(ii) above, all policyholders involved-

- (i) are without delay informed of the lapsing in accordance with paragraph (b)(i)(aa) and (bb), which apply with the necessary changes; and
 - (ii) are so informed on new arrangements made by the insurer whether for the mandating or authorising of another person as intermediary or for servicing the relevant policies itself.
- (d) An insurer must, within a reasonable time after being requested to do so, provide any person with whom an agreement contemplated in paragraph (a) of this Rule has been entered into, with all information about the insurer or its policies reasonably required by such person to comply with any disclosure or other requirements binding on such person by virtue of any law.

Debit orders

7.2 An insurance party involved—

- (a) shall ensure that any debit order to be signed by a policyholder for the payment of premiums to any such party, shall not be drafted to be in favour of any other person (whether conjointly with the insurance party involved or as an alternative) but such first mentioned party;
- (b) shall not unilaterally terminate any current debit order signed by a policyholder without having informed the policyholder in writing of the intention so to terminate the debit order at least 30 days before the effective date of such envisaged termination.

Unilateral termination of policies

- 7.3** (a) An insurer shall not unilaterally terminate any policy without giving notice as set out in paragraph (b) of this Rule.
- (b) The insurer may give notice either-
- (i) direct to the policyholder 30 days prior to the cancellation date; or
 - (ii) by satisfying itself that notice has been given in accordance with subparagraph (i) to the policyholder by the independent intermediary; or
 - (iii) if compliance with subparagraphs (i) or (ii) is not possible, by publication of such notice in two editions of a newspaper circulating in all areas in which it is reasonably believed that

relevant policyholders reside, and by forwarding a copy of such notice to the registrar prior to publication.

Rejection of claims

- 7.4 (a) An insurance party involved shall ensure that where any decision has been made as to the rejection of any claim under a policy, or as regards the quantum of a claim which is in dispute, the policyholder concerned is in writing informed of the reasons for the decision and that the policyholder may within a period of not less than 90 days after the date of the relevant decision make representations to the relevant insurer in respect of such decision. The 90 days referred to may not be included in any time-barring period contained in the policy for the institution of legal action.
- (b) If a claim is rejected or a quantum is disputed as contemplated in paragraph (a) on behalf of a short-term insurer by a person other than the short-term insurer, such other person must provide the rejection notice contemplated in that paragraph, 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.

Periods of grace

- 7.5 An insurer shall ensure that a policy contains a provision for a period of grace for the payment of premiums of not less than 15 days after the relevant due date: Provided that in the case of a monthly policy, such provision must apply with effect from the second month of the currency of the policy.

Signing of blank or uncompleted forms

- 7.6 No insurance party involved may require, permit or allow a policyholder to sign any blank or partially completed form necessary for the purpose of entering into a policy, where another person will be required, permitted or allowed to fill in other required detail, or enter into any policy where any such signing and providing of detail have occurred.

PART VI

MISCELLANEOUS

Waiver of rights

8. No insurance party involved 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.

Penalties

9. An insurance party involved 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 64(1)(c) or 65(1)(c), as the case may be, of the Act.

Repeal and transitional provision

- 10.1 The previous Rules are hereby repealed.
- 10.2 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

11. These Rules are called the Policyholder Protection Rules (Short-term Insurance), 2004, and come into operation on a date as determined and published by the Minister in accordance with section 55(5) of the Act.
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