

**FINANCIAL SERVICES BOARD
REPUBLIC OF SOUTH AFRICA**

SHORT-TERM INSURANCE ACT, 1998 (ACT 53 OF 1998)

Addressee:	Short-term insurers and persons acting in the capacity of a bailee (such as couriers and transporters)		File:	10.41.2.7.2	
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3 rd	-	-	-	-	-
Subject:	Requirements of the Short-term Insurance Act No. 53 of 1998 in respect of insurance offered by persons acting in the capacity of a bailee ¹ (such as couriers and transporters)				

1. PURPOSE

The purpose of this Information Letter is to provide guidance on the requirements of the Short-term Insurance Act No. 53 of 1998 ("the Act") in respect of insurance offered by persons acting in the capacity of a bailee (such as couriers and transporters).

2. TARGET AUDIENCE OF INFORMATION LETTER

This Information Letter is targeted at –

- 2.1 short-term insurers ("insurers") that conduct insurance business with persons acting in the capacity of a bailee; and
- 2.2 persons acting in the capacity of a bailee that offer or provide insurance to, or facilitate insurance for, their clients, or conduct insurance related activities.

3. BACKGROUND

- 3.1 The Registrar of Short-term Insurance has become aware of certain practices

¹ Bailee – means a person legally holding the goods of another, for either payment or gratuity, and has a responsibility to take reasonable care of the goods and look after them as if it was his own in order for the safe return of the goods to the owner when the contract is fulfilled. The expression "bailee" is sometimes exchanged for the expression "depositor".

of insurers and persons acting in the capacity of a bailee that are not compliant with the Act.

- 3.2 To ensure that the Act is interpreted and applied by insurers and persons acting in the capacity of a bailee in a consistent and uniform manner, it was deemed prudent to issue an Information Letter setting out the requirements of the Act².

4. REQUIREMENTS OF THE ACT

Only a registered insurer may conduct insurance business

- 4.1 Under section 7 of the Act, no person may carry on any kind of short-term insurance business unless that person is registered and is authorised to carry on the kind of short-term insurance business concerned under the Act.
- 4.2 Short-term insurance business is the business of providing or undertaking to provide policy benefits under short-term policies.

Short-term policies include transportation policies. A transportation policy is a contract under which a person, in return for a premium³, undertakes to provide policy benefits⁴ if an event, contemplated in the contract as a risk relating to the possession, use or ownership of a vessel, aircraft or other craft or *for the conveyance of persons or goods by air, space, land or water, or to the storage, treatment or handling of goods so conveyed or to be so conveyed*, occurs.

Circumstances under which a person acting in the capacity of a bailee may offer to insure the goods of its clients

- 4.3 A person acting in the capacity of a bailee can only insure the goods of its client or intermediate a short-term policy for a client, if the person –
- 4.3.1 is a registered insurer; or
- 4.3.2 enters into a short-term policy⁵ (“policy”) with a registered insurer as a bailee (see paragraphs 4.5 to 4.8); or
- 4.3.3 acts as an independent intermediary that facilitates a client entering into a policy with a registered insurer (see paragraphs 4.9 to 4.15); or

² Any word or expression referred to in this Information Letter to which a meaning has been assigned in the Act or the regulations made under the Act has that meaning.

³ Any consideration given or to be given in return for an undertaking to provide policy benefits.

⁴ A sum of money, services or other benefits.

⁵ A contract of insurance.

4.3.4 acts as a binder holder that performs binder functions in terms of a binder agreement or a hold-covered binder agreement (see paragraphs 4.16 to 4.19).

4.4 A person acting in the capacity of a bailee that insures the goods of its clients in circumstances other than those referred to in paragraph 4.3 is conducting unregistered insurance business and contravening section 7 of the Act.

A person may insure the goods of a client as a bailee

4.5 A person acting in the capacity of a bailee that is not a registered insurer may enter into a policy with a registered insurer, which policy insures the goods of its clients, in the capacity of a bailee.

4.6 A bailee has an insurable interest (i.e. the liability to the client for loss or damage to the goods) in the goods that the client left with the bailee in terms of the contract of bailment.

4.7 A bailee may therefore insure the goods of its clients in its own name to the extent of its potential liability to the client for the loss or damage to the goods. The bailee is the policyholder (the person entitled to be provided with the policy benefits under the policy) and must pay the premiums stipulated in the policy.

4.8 A bailee cannot recover the premium paid by it to the insurer directly from the client. The premium payable forms part of the cost of the bailee doing business and may be taken into account in pricing the total cost of doing business as a bailee.⁶

A bailee may act as an independent intermediary

4.9 A bailee may contractually limit (in full or in part) its liability to clients for the loss or damage to their goods. If the bailee offers to facilitate insurance for the potential loss or damage to the goods of a client in mitigation of the limited contractual liability accepted by the bailee, the latter acts as an independent intermediary (see paragraphs 4.10 to 4.15).

4.10 Section 1 of the Act defines an “independent intermediary” as a person, other than a representative⁷, who renders services as intermediary.

4.11 Section 1 of the Act defines “services as intermediary” as any act performed

⁶ This does not prevent the bailee from disclosing to its client the bailee's cost of insurance, separate from the transport cost. However, this insurance premium cannot form a separate charge to the client.

⁷ A representative is a natural person employed by or working for a short-term insurer and receiving or entitled to receive remuneration and for the purpose of rendering services as intermediary in relation to short-term policies entered into or to be entered into by the short-term insurer only.

by a person the result of which is that another person will or does or offers to enter into, vary or renew an insurance policy or with a view to maintaining, servicing or otherwise dealing with, collecting or accounting for premiums payable under or receiving, submitting or processing claims under, a policy.

- 4.12 A bailee may therefore act as an independent intermediary by facilitating the entering into of a policy by its client. To lawfully act as an independent intermediary, the bailee must be licensed as a financial services provider under the Financial Advisory and Intermediary Services Act No. 37 of 2002 and comply with the Act, specifically sections 45 and 48 of the Act.
- 4.13 A bailee may be remunerated for services rendered as an intermediary, subject to sections 8(5) and 48 of the Act.
- 4.14 A bailee that acts as an independent intermediary cannot also be the policyholder (the person entitled to be provided with the policy benefits under the policy) of a policy entered into by a client of that bailee. The policy (contract of insurance) is between the client of the bailee and the insurer.
- 4.15 Intermediary services rendered in respect of a policy to be entered into with an insurer located outside of South Africa are subject to the approval of the Registrar of Short-term Insurance under section 8(2)(d) of the Act⁸.

A bailee may act as a binder holder

- 4.16 A bailee may act as a binder holder that performs binder functions in terms of a binder agreement or a hold-covered binder agreement under Regulation 6 made under section 48A of the Act.
- 4.17 Regulation 6.1 defines “binder agreement” as an agreement contemplated in section 48A (subject to the requirements, limitations and prohibitions relating to binder agreements in Regulation 6) and “binder holder” (subject to the requirements, limitations and prohibitions relating to binder holders in Regulation 6) as a person with whom an insurer⁹ has concluded a binder agreement. Regulation 6.5 describes a hold-covered binder agreement.
- 4.18 Regulation 6.7 provides for transitional arrangements for any agreement concluded before or on the date on which Part 6 commences, which would have been subject to Part 6 if it had commenced at the time that the agreement was concluded, to be aligned with Part 6 by 1 January 2013.

⁸ See Directive 149.A.iii (ST) in this regard.

⁹ A registered short-term insurer or Lloyd's.

- 4.19 A binder holder that is interacting with clients must also be an independent intermediary.¹⁰

5. PRACTICES TO DESIST FROM AND ACTIONS TO BE TAKEN

- 5.1 Insurers and persons acting in the capacity of bailee must comply with the Act and if necessary take immediate and necessary remedial actions to comply with the Act.
- 5.2 Insurers and persons acting in the capacity of bailee that are not able to immediately comply with the Act must, –
- 5.2.1 within 30 days from the effective date of this Information Letter, inform the Registrar accordingly; and
- 5.2.2 within 15 days from the date of informing the Registrar, submit an action plan to the Registrar, which action plan must set out how and by when the insurer and persons acting in the capacity of bailee will comply with the Act, within a reasonable time period to the satisfaction of the Registrar.
- 5.3 The notification and action plan referred to in paragraph 5.2 must be submitted electronically to the Registrar, c/o INS.Bailee@fsb.co.za.

6. NON-COMPLIANCE WITH THE ACT

Enforcement Committee

- 6.1 A contravention of the Act may be referred to the enforcement committee in accordance with the section 6 of the Financial Institutions (Protection of Funds) Act No. 28 of 2001.

Offences

- 6.2 Failure to comply with the Act constitutes an offence.

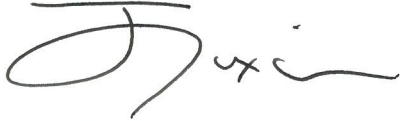
7. AVAILABILITY AND INFORMATION SHARING

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

If an insurer or person acting in the capacity of a bailee requires further clarification or information in respect of this Information Letter, that insurer or

¹⁰ See definitions of “non-mandated intermediary” and “mandated intermediary” in Regulation 6.1.

person may contact Mpho Mokoena at 012 422 2990 or
Mpho.Mokoena@fsb.co.za.



REGISTRAR OF SHORT-TERM INSURANCE