

## Insurance Act, 2017

### Communication 2 of 2018

#### Process for the conversion of registrations under the Long-term Insurance Act and Short-term Insurance Act to licences under the Insurance Act

##### ***Objective of this communication***

*This communication sets out the process the Prudential Authority will implement for the conversion of registrations under the Long-term Insurance Act and Short-term Insurance Act to licences under the Insurance Act.*

*The communication also provides additional information relating to the conversion process such as the scope of conversions and the considerations that will inform the assessment of “conducting insurance business actively and prudently”.*

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#### **1. Application**

This communication is relevant to all insurers registered under the Long-term Insurance Act, 1998 (LTIA), Short-term Insurance Act, 1998 (STIA), or both, as the case may be, before the effective date (1 July 2018) of the Insurance Act, 2017 (the Act), other than Lloyds. These insurers are referred to as “previously registered insurers” in this communication.

#### **2. Purpose**

This communication sets out the process of the Prudential Authority (PA) for the conversion of registrations under the LTIA and STIA to licences under the Act as

required under Item 6(3)(a) (Continuation of previously registered insurers) in Schedule 3 (Transitional Arrangements) to the Act<sup>1</sup>.

This communication also provides additional information relating to the conversions.

### 3. What does Item 6 of Schedule 3 to the Act say?

3.1. Schedule 3 to the Act provides for transitional arrangements to facilitate the implementation of the Act. Item 6 of Schedule 3 to the Act provides for the continuation of previously registered insurers under the Act.

3.2. Item 6 may be summarised as follows:

- a) As of the effective date, every previously registered insurer that was, immediately before the effective date, registered as a long-term insurer or a short-term insurer under the LTIA or STIA continues to exist as an insurer, as if it had been licensed under the Act. It may continue to conduct the insurance business for which it was so registered until its registration is converted to a licence under the Act, subject to and in accordance with the governance, financial soundness, security, reporting and public disclosure obligations imposed under the Act.
- b) The PA must within a period of two years after the effective date; convert the registration of all previously registered insurers to a licence in accordance with the Act.
- c) The process must be –
  - i. reasonable and fair;
  - ii. allow for sufficient engagement with a previously registered insurer; and
  - iii. among other matters, require the insurer to demonstrate that it has a plan to meet its stated commitments in terms of transformation of the insurance sector.
- d) The PA must convert the registration of a previously registered insurer to a license to conduct a class and/or sub-class of life insurance business or non-life insurance business referred to in Schedule 2 to the Act if the previously registered insurer, immediately prior to the effective date of the Act, were *actively and prudently* conducting insurance business similar to that class or sub-class of insurance business.
- e) If the PA does not convert the registration of a previously registered insurer to a licence to conduct insurance business in respect of a specific class or sub-class that is similar to the business that the previously registered insurer was registered for on the effective date because the

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<sup>1</sup> Although the Act requires the PA to, within two months of the effective date of the Act, publish the process the PA will implement to convert the registration of all previously registered insurers to a licence under the Act, it was deemed important to issue the process as soon as possible. This communication therefore sets out the process the PA will implement to convert the registration of all previously registered insurers to a licence under the Act.

insurer did not immediately prior to the effective date conduct that insurance business actively or prudently or, because of the classes and sub-classes provided for in the Act, no longer conduct that insurance business, the PA must direct the insurer to make arrangements to the satisfaction of the PA to –

- i. discharge its obligations under all insurance policies entered into in respect of that class or sub-class before the conversion of that insurer's registration;
- ii. ensure the orderly resolution of that insurance business of the insurer; or
- iii. transfer that insurance business to another insurer under section 50 of the Act by a specified date.

#### **4. What are the principles that will guide the conversion process?**

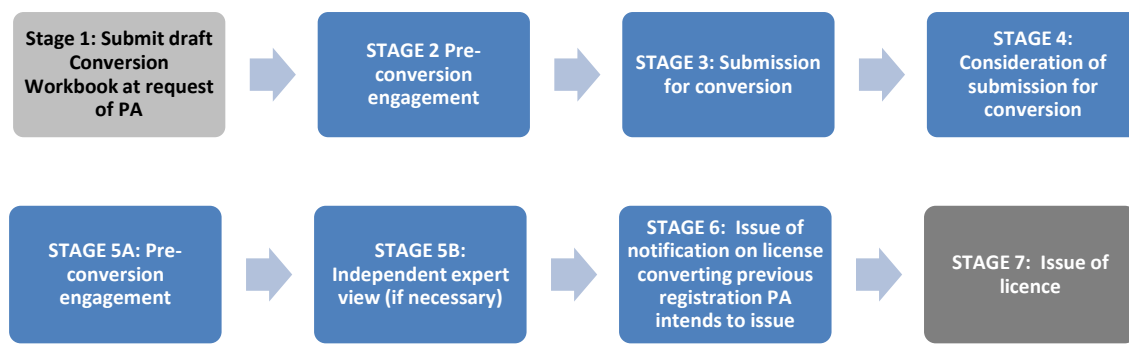
The following principles will guide the conversion process:

- 4.1. **Principle 1: Certainty** – Insurers registered under the LTIA or the STIA (the Insurance Acts) have certainty as to the implications and the processes that will apply in respect of conversion of registrations under the Act.
- 4.2. **Principle 2: Continuity** - Insurers registered under the Insurance Acts must be able to continue conducting insurance business they actively conducted immediately prior to the enactment of the Act, subject to -
  - a) the business having been conducted in a prudent manner;
  - b) Principle 4 being met (i.e. the imperatives inherent in the reform of the insurance prudential regulatory reform being met); and
  - c) insurers registered under the Insurance Acts are afforded the opportunity to comply with the Act progressively, where appropriate.
- 4.3. **Principle 3: Stability** – The conversion of registration of insurers must be least disruptive and not pose risk to financial stability.
- 4.4. **Principle 4: Improve, grow and regularise sector** – The conversion of registration of insurers registered under the Insurance Acts in terms of the Act must –
  - a) not impede the need to evolve the insurance prudential regulatory framework to keep pace with market developments since 1998;
  - b) promote the maintenance of a fair, safe and stable insurance market for the benefit and protection of policyholders; and
  - c) to the extent practical and with due consideration to the South African context, meet appropriate international standards relating to insurance regulation and supervision.

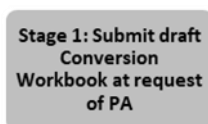
## 5. The 7-stage process

The conversion process is as follows:

*Summary*



*Detailed description of process*



The Conversion Workbook will be available on the website of the South African Reserve Bank soon. The conversion process relating to a specific insurer will commence when the PA in writing requests the insurer to submit a draft of the Conversion Workbook.



The PA will engage in structured formal meetings with a previously registered insurer to:

- Assist the previously registered insurer in understanding the conversion of registration process and what happens at the various stages of the process and the PA's expectations of the previously registered insurer.
- Undertake an initial mapping of the existing insurance business for which the previously registered insurer is registered to the classes and sub-classes of business set out in Schedule 2 to the Act in the interest of continuity.
- Identify the existing insurance business for which the previously registered insurer is registered, but are not actively conducted.
- Identify the existing insurance business for which the previously registered insurer is registered that cannot be accommodated under the classes and sub-classes of business set out in Schedule 2 of the Act and for which conversion is not possible (life and non-life insurance business, and limitations relating to certain types of insurance business and insurers).
- Discuss what is required by the PA to consider the conversion of registration in respect of classes and sub-classes in respect of existing insurance business for which the previously registered insurer is registered, but are not actively conducted (continuity of insurance business).
- Discuss the best way forward in respect of the existing insurance business for which

the previously registered insurer is registered that cannot be accommodated under the classes and sub-classes of business set out in Schedule 2 or for which conversion is not possible.

- Identify areas where the previously registered insurer is not able to comply with prudential standards and other requirements, and to discuss how and by when the previously registered insurer will be able to meet these requirements.

**STAGE 3: Submission  
for conversion**

The previously registered insurer must submit the final version of the Conversion Workbook. No fees will be payable.

**STAGE 4:  
Consideration of  
submission for  
conversion**

The PA WILL consider the final version of the Conversion Workbook of the previously registered insurer.

**STAGE 5A: Pre-  
conversion  
engagement**

The PA will engage in a number of structured formal meetings with the previously registered insurer to discuss the proposed scope of the conversion of registration of the previously registered insurer and plans to facilitate compliance with the Act, prudential standards and other requirements over time.

**STAGE 5B:  
Independent expert  
view (if necessary)**

If no consensus is reached on the proposed scope of the conversion of registration, the PA and the previously registered insurer must collectively appoint an independent expert to make recommendations on how best to address disagreements. The cost of the independent expert will be for the account of the previously registered insurer.

**STAGE 6: Issue of  
notification on license  
converting previous  
registration PA  
intends to issue**

The PA will issue a notice to the previously registered insurer on the license converting the previous registration that it intends to issue and invites representations from the previously registered insurer. The previously registered insurer may make representations.

STAGE 7: Issue of  
licence

The PA will issue a license converting the previous registration. If the previously registered insurer is not satisfied with the licence, it may apply for the reconsideration of the PA's decision to the Tribunal established under the Financial Sector Regulation Act, 2017.

## 6. Progressive implementation of the process

- 6.1. The PA must within a period of two years after the effective date of the Act convert the registration of all previously registered insurers to a licence in accordance with the Act. The following progressive conversion process is envisaged to ensure effectiveness and efficiency<sup>2</sup>:
- a) Phase 1 (1 July 2018 to 1 January 2019): Conversion of registrations of dormant insurers, insurers that want to become microinsurers and insurers that are or want to become cell captive insurers.
  - b) Phase 2 (1 January 2019 to 1 October 2019): Conversion of registrations of captive insurers, insurers only conducting reinsurance and insurers conducting only linked insurance business.
  - c) Phase 3 (1 October 2019 to 31 July 2020): Conversion of registrations of insurers other than those referred to in Phases 1 and 2 above.
- 6.2. The conversion process relating to a specific insurer will commence when the PA in writing requests the insurer to submit a draft of the Conversion Workbook. See Stage 1 of paragraph 5 above.

## 7. What is and is not in the scope of conversion?

### *In scope*

- 7.1. Item 6 of Schedule 3 to the Act relates to the conversion of the types of policies underwritten under the Insurance Acts to classes or sub-classes of insurance business provided for in the Act that are similar.
- 7.2. However, items 9 and 10 in Schedule 3 to the Act are also relevant to the conversion.
- 7.3. Item 9 (Key persons and significant owners) provides that the PA must, when considering the conversion of the registration of a previously registered insurer –
- a) approve the directors and auditor of the insurer; and

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<sup>2</sup> The sequencing may change if capacity within the PA allows for it. Insurers will be advised of such changes.

- b) require the previously registered insurer to demonstrate and certify that its key persons (other than directors and auditor) and significant owners meet the prescribed fit and proper requirements.
- 7.4. Item 10 (Conducting of business other than insurance business inside Republic and conducting of any other business outside Republic) provides that a previously registered insurer must, as part of the conversion process apply for approval to conduct –
  - a) any business other than insurance business in the Republic, including any business performed on behalf of another person; or
  - b) any business, including business similar to insurance business, outside the Republic.
- 7.5. Also, approvals granted under the Insurance Acts must also be assessed as part of the conversion to identify which approvals relate to matters for which approval under the Act are required.

*Not in scope*

- 7.6. This means that the conversion process does not include consideration of any additional classes or sub-classes of insurance business that is not similar to the types of insurance business conducted actively and prudently.
- 7.7. However, new licence applications may be submitted at any time after the effective date of the Act. Applications for variation of any conditions of existing registrations may be submitted if the phase referred to in paragraph 6 relating to the insurer has not yet commenced. Applications for variation of licencing conditions after the finalisation of the conversion process for an insurer may be submitted to the PA after the finalisation of the conversion and issuing of the licencing certificate.

## **8. What does “actively” and “prudently” mean?**

- 8.1. In assessing whether an insurer is actively conducting insurance business in a specific class or sub-class the PA will have regard to the number of in-force policies and the history of the business written in respect of a specific class or sub-class of insurance business.
- 8.2. In assessing whether an insurer is prudently conducting insurance business in a specific class or sub-class the PA will have regard to –
  - a) whether financial and other resources are appropriate for the nature, scale and complexity of the insurance business;
  - b) whether the insurance business is and will continue to be conducted in accordance with regulatory financial soundness requirements;
  - c) the governance, risk management and internal controls;
  - d) the size and type of insurance risks carried by the insurer;

- e) the reinsurance arrangements entered into; and
  - f) the extent of non-insurance business and the nature of those activities (in particular, whether the activities may be prejudicial to the financial soundness of the insurer).
- 8.3. In considering the above, the PA will also consider the insurers observance of the principles set out in section 4 of the Act. Section 4 provides that an insurer must, at all times –
- a) conduct its business with integrity;
  - b) conduct its business with due skill, care and diligence;
  - c) act in a prudent manner;
  - d) organise and control its affairs responsibly and effectively; and
  - e) deal with the PA in an open and cooperative way.

## **9. When will an insurer receive its licence certificate?**

- 9.1. The insurance regulatory framework is an integrated prudential and conduct framework in the sense that the implementation of the Act and the Prudential Standards require amendments to the subordinate conduct-related legislative framework (Regulations and Policyholder Protection Rules (PPRs) made under the Insurance Acts) to avoid regulatory gaps that could undermine a co-ordinated and harmonised approach to insurance regulation and supervision. These amendments are necessary because the Insurance Act –
- a) introduces new authorisation classes of insurance business that are significantly more granular than the current “classes” or types of policies provided for under the Insurance Acts;
  - b) defines various concepts in a manner that differ from how these concepts are currently defined in the Insurance Acts; and
  - c) provides for a two-year period during which existing registrations under the Insurance Acts must be converted to licences under the Act. The conduct legislative framework must therefore appropriately deal with registered insurers and licensed insurers, as and when applicable. Put differently, the existing terminology in the Insurance Acts must apply to registered insurers, and the Act terminology must apply to licensed insurers.
- 9.3. A coordinated approach to the development of the prudential and conduct subordinate legislative framework was implemented. However, due to delays in the tabling of the proposed amendments to Regulations made under the Insurance Acts in Parliament, outside the control of the Financial Sector Conduct Authority, the subordinated conduct legislative framework (Tranche 2 amendments to the Regulations and PPRs under the Insurance Acts) will not be in place by 1 July 2018.



- 9.4. Notwithstanding the fact that the Act will be effective from the 1 July 2018, the above means that the process for the conversion of registrations to licences will be managed in such a way that the regulation and supervision of the conduct of insurers is not undermined.
- 9.5. Essentially this means that no new license will be issued under the Act and no conversion of a registration can be finalised if the conduct-related legislative framework is not yet in place. The conversion process may therefore be concluded, but the actual licence certificate will only be issued once the Tranche 2 amendments to the Regulations and PPRs under the Insurance Acts have been promulgated. This will however not impact the conversion of registrations for reinsurers and the licencing of branches of reinsurers.