

## LEPPARD LEGISLATION WATCH

**FEBRUARY 2017**

Welcome to the second Leppard Legislation Watch, a monthly newsletter providing selected updates on legislation which could have an impact on your business and the business of your clients. Space does not permit us to go into the finer details of proposed legislative changes, neither would we presume to be experts on the changes, so the purpose of the Leppard Legislation Watch is to draw your attention to selected updates so that you (or your client) can make a more detailed study of the changes and their possible impact on your business.

### **What to watch – selected recent developments**

#### **Financial Zone**

- ❖ Short-term Insurance Act: Regulations – draft general regulations, demarcation (accident and health policies) regulations, draft policyholder protection rules
- ❖ Long-Term Insurance Act: Regulations – draft general regulations, demarcation (health policies) regulations, draft policyholder protection rules
- ❖ Pension Funds Act: Draft Default Regulations
- ❖ Financial Advisory and Intermediary Services Act – draft Conduct of Business Report

#### **General**

- ❖ Promotion of Administrative Justice Act: Draft Code of Good Administrative Conduct
- ❖ Income Tax: Amendment Act 2016

### **A little more information**

#### **Financial Zone**

- ❖ Short-Term Insurance Act: Regulations – draft general regulation amendments are scheduled for commencement on 11 May 2017, with various ‘alignment dates’, and comment is still open until 22 February 2017. Amongst others, these amendments affect the definitions of ‘independent

intermediary' and 'services as an intermediary'; introduce remuneration limitation on outsourcing of a binder function or policy data administration; introduce limitations on remuneration payable by a policyholder to an intermediary or representative; mandate that remuneration must be reasonably commensurate with actual service, function or activity, must not be structured in a manner that increases the risk of unfair outcomes for consumers, and must not be linked to the value of claims repudiated, paid, not paid or partly paid; and amends binder holder duties, which will require an insurer to regularly assess a binder holder's fitness and propriety, controls, operational and financial and legal compliance capability.

- ❖ Short-Term Insurance Act: Regulations – demarcation (accident and health policies) regulations amendments are scheduled to commence on 1 April 2017 and will, inter alia, limit commission on such policies; clearly define specific matters; require that such a policy must fit within the parameters created by the definitions, and comply with the further requirements of the regulations (thereby limiting product choice); limit certain contract types differentiation based on certain age and fraudulent claim considerations; prohibit variation of certain contract types due to health or claim experience of a policyholder; limit termination of certain contract types due to non-payment, fraud, or cancellation of a product line; and introduce specific marketing, policy content, disclosure and reporting duties.
- ❖ Short-Term Insurance Act: Regulations – draft policyholder protection rules contain 19 principle-based rules and comments are still open until 22 February 2017. These rules propose amongst others that non-compliance with any of the provisions will be an offence; the rules also cover fair treatment, product line design, consumer credit insurance, cooling-off periods, no negative option selection, voidness rules, premium rules, completed forms, advertising, disclosures, record-keeping, grace periods, ongoing product line review, termination, and data, claim and complaint management.
- ❖ Long-Term Insurance Act: Regulations – draft general regulations, demarcation (health policies) regulations, draft policyholder protection rules. These proposed amendments are very similar to the Short-Term Insurance Act amendments, obviously with appropriate changes for the long-term nature of the products
- ❖ Pension Funds Act: Draft Default Regulations – once a commencement date is gazetted, the Default Regulations will, amongst others, require that: (i) The rules of funds with a defined contribution category must provide that the board establish an investment policy statement, which provides for a default investment portfolio; (ii) The board must be able to demonstrate to the Registrar that the default investment portfolio is appropriate for persons automatically enrolled, is adequately communicated, is cost-effective,

discloses all fees and charges; (iii) The board must also be able to demonstrate to the Registrar that passive and active investment options were equally considered, that there are no loyalty bonuses and no complex fee structures, members are not locked in, and that the portfolio is regularly reviewed; (iv) A member enrolled as an employment condition must be treated as paid-up member upon leaving work (which paid-up status only ends when the member instructs the fund to pay out or to transfer benefits); (v) There will be limitations on fund rules with respect to paid-up members; (vi) The rules of all retirement funds must provide for the board to establish an annuity strategy, including giving members access to retirement benefits counseling at least 3 months before their retirement date; and (vii) The board must be able to demonstrate to the Registrar that the proposed annuity strategy is suitable for members enrolled into it, adequately communicated, cost-effective, discloses all fees and charges (and their impact on members' benefits), and are regularly reviewed.

- ❖ Financial Advisory and Intermediary Services Act – draft Conduct of Business Report. Comments on these proposed changes are due by 28 February – this report will replace FAIS compliance reports, and are aimed at ending duplications, will be proactive in nature and address undesirable practices.

#### General

- ❖ Promotion of Administrative Justice Act: Draft Code of Good Administrative Conduct. This Code is meant as a guide as to what constitutes fair and rational administrative decisions, and although you or your clients might not be making these types of decisions, a good example of where your client may be effected is where they have Professional Indemnity cover and are now facing a disciplinary inquiry by their professional body (which does make administrative decisions). The professional body's actions would now be able to be assessed against the good conduct code to ensure fair treatment.
- ❖ Income Tax: Amendment Act 2016 – amendments to many sections of the Income Tax Act are covered by this Amendment Act, as happens annually.

***Leppard Legislation Watch** is a monthly newsletter providing selected updates on legislation which could have an impact on the business of Leppard Underwriting and its clients. **Leppard Legislation Watch** is not intended as legal or professional advice and is published for general information purposes only. This newsletter is not a substitute for legal or other professional advice.*