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GOEWERMENSKENNISGEWING

DEPARTEMENT VAN FINANSIES

No. R. 2886

29 Desember 1989

WYSIGING VAN REGULASIES UITGEVAARDIG Kragtens DIE VERSEKERINGSWET, 1943 (WET No. 27 VAN 1943)

Die Minister van Finansies het kragtens artikel 76, saamgelees met artikel 20bis (2) (b) van die Versekeringswet, 1943 (Wet No. 27 van 1943), die regulasies in die Bylae uitgevaardig.

BYLAE

Woordomskeywing

1. In hierdie regulasies beteken "die Regulasies" die regulasies afgekondig by Goewermenskennisgewing No. R. 1285 van 27 Augustus 1965, soos gewysig deur Goewermenskennisgewings Nos. R. 252 van 23 Februarie 1968, R. 2036 van 2 November 1973, R. 2489 van 28 Desember 1973, R. 1442 van 20 Augustus 1976, R. 333 van 1 Maart 1977, R. 838 van 20 Mei 1977, R. 1249 van 8 Julie 1977, R. 2274 van 4 November 1977, R. 947 van 12 Mei 1978, R. 1631 van 11 Augustus 1978, R. 120 van 26 Januarie 1979, R. 353 van 20 Februarie 1981, R. 396 van 27 Februarie 1981, R. 905 van 24 April 1981, R. 2064 van 2 Oktober 1981, R. 446 van 4 Maart 1983, R. 2145 van 28 September 1984, R. 81 van 18 Januarie 1985, R. 2117 van 20 September 1985, R. 2324 van 18 Oktober 1985, R. 431 van 14 Maart 1986, R. 949 van 16 Mei 1986, R. 2584 en R. 2628 van 12 Desember 1986, R. 2288 van 16 Oktober 1987, R. 2501 van 9 Desember 1988, R. 1345 van 30 Junie 1989, R. 1447 van 7 Julie 1989 en R. 1922 van 1 September 1989.

2. Die volgende regulasies word hierby na regulasie 5ter ingevoeg:

- (a) "5quat. Elke aansoek om goedkeuring deur die Registrateur ingevolge regulasie 33 deur 'n versekeraar ingedien moet in die vorm van Vorm R.V. 8 wees."; en

GOVERNMENT NOTICE

DEPARTMENT OF FINANCE

No. R. 2886

29 December 1989

AMENDMENT OF REGULATIONS UNDER THE INSURANCE ACT, 1943 (ACT No. 27 OF 1943)

The Minister of Finance has, under section 76 read with section 20bis (2) (b) of the Insurance Act, 1943 (Act No. 27 of 1943), made the regulations in the Schedule.

SCHEDULE

Definition

1. In these regulations "the Regulations" means the regulations published by Government Notice No. R. 1285 of 27 August 1965, as amended by Government Notices Nos. R. 252 of 23 February 1968, R. 2036 of 2 November 1973, R. 2489 of 28 December 1973, R. 1442 of 20 August 1976, R. 333 of 1 March 1977, R. 838 of 20 May 1977, R. 1249 of 8 July 1977, R. 2274 of 4 November 1977, R. 947 of 12 May 1978, R. 1631 of 11 August 1978, R. 120 of 26 January 1979, R. 353 of 20 February 1981, R. 396 of 27 February 1981, R. 905 of 24 April 1981, R. 2064 of 2 October 1981, R. 446 of 4 March 1983, R. 2145 of 28 September 1984, R. 81 of 18 January 1985, R. 2117 of 20 September 1985, R. 2324 of 18 October 1985, R. 431 of 14 March 1986, R. 949 of 16 May 1986, R. 2584 and R. 2628 of 12 December 1986, R. 2288 of 16 October 1987, R. 2501 of 9 December 1988, R. 1345 of 30 June 1989, R. 1447 of 7 July 1989 and R. 1922 of 1 September 1989.

2. The following regulations are hereby inserted after regulation 5ter—

- (a) "5quat. Every application for the approval of the Registrar in terms of regulation 33 submitted by an insurer shall be in the form of Form R.V. 8."; and

- (b) "5quin. Vanaf die inwerkingtreding van hierdie regulasie moet 'n ouditeur se sertifikaat wat ooreenkomstig artikel 20bis (2) (b) verstrek word, in die vorm van Vorm R.V. 9 wees."

3. Die opskrif wat regulasie 10 voorafgaan, word hierby deur die volgende opskrif vervang:

"STAAT WAT DEUR AGENTE, MAKELAARS OF ANDER PERSONE OP WIE ARTIKEL 20bis VAN DIE WET VAN TOEPASSING IS, VERSTREK MOET WORD"

4. Regulasie 10 van die Regulasies word hierby deur die volgende regulasie vervang:

"10. Elke agent, makelaar of ander persoon op wie die bepalings van artikel 20bis van die Wet van toepassing is, moet binne drie maande na die verstryking van sy boekjaar, 'n staat, in die vorm van Vorm R.V. 9, wat deur sy ouditeur(s) gewaarmerk moet word, opstel en by die Suid-Afrikaanse Versekeringsvereniging indien, wat aantoon die totale bedrag, tot die naaste rand, van die premies wat deur sodanige agent, makelaar of persoon gedurende sy jongste boekjaar aan geregistreerde versekeraars en versekeraars by Lloyds verskuldig geword het, nadat kommissie deur sodanige versekeraars en versekeraars by Lloyds aan daardie agent, makelaar of persoon verskuldig in rekening gebring is."

5. Die volgende regulasie word hierby na regulasie 10 in die Regulasies ingevoeg:

"Periode waarbinne sekerheid deur agent, makelaar of persoon gestel moet word"

10bis. Elke agent, makelaar of persoon —

- (a) op wie artikel 20bis (2) (a) van toepassing is, moet sewe dae voordat hy aan enige versekeraar verskuldig raak sekerheid stel vir enige bedrag wat deur hom aan geregistreerde versekeraars betaalbaar mag word; of
- (b) op wie artikel 20bis (2) (b) van toepassing is, moet binne 'n periode van vier maande na die verstryking van sy boekjaar, indien die staat van die agent, makelaar of persoon aandui dat dit nodig is, sodanige bykomende waarborg as wat die staat mag aandui aan die Suid-Afrikaanse Versekeringsvereniging verstrek."

Vervanging van Vorm R.V. 6

6. Vorm R.V. 6 van die Regulasies word hierby deur die volgende vorm vervang:

- (b) "5quin. As from the commencement of this regulation, an auditor's certificate furnished in pursuance of section 20bis (2) (b) shall be in the form of Form R.V. 9."

3. The following heading is hereby substituted for the heading preceding regulation 10:

"STATEMENT TO BE FURNISHED BY AGENTS, BROKERS OR OTHER PERSONS TO WHOM SECTION 20bis OF THE ACT APPLIES"

4. The following regulation is hereby substituted for regulation 10 of the Regulations:

"10. Every agent, broker or other person to whom the provisions of section 20bis of the Act apply shall, within a period of three months as from the expiration of his financial year, prepare and furnish to the South African Insurance Association a statement in the form of Form R.V. 9, attested by his auditor(s) showing the aggregate amount, to the nearest rand, of the premiums which became due to registered insurers and underwriters at Lloyd's by such agent, broker or person in his last financial year after setting off any commission which was owing to such agent, broker or person by such insurers and underwriters at Lloyd's."

5. The following regulation is hereby inserted in the Regulations after regulation 10:

"Period within which security must be furnished by agent, broker or person"

10bis. Every agent, broker or person —

- (a) to whom section 20bis (2) (a) applies, shall, seven days before becoming indebted to any insurer, furnish security for any amount which may become payable by him to registered insurers; or
- (b) to whom section 20bis (2) (b) applies, shall, within a period of four months as from the expiration of his financial year, should the statement of the agent, broker or person indicate that this is necessary, furnish to the South African Insurance Association such additional guarantee as the statement may indicate."

Substitution of new form for Form R.V. 6

6. The following form is hereby substituted for Form R.V. 6 to the Regulations:

WAARBORG

[Artikel 20bis (2) (a), (b) en (3) van die Versekeringswet, 1943]

Nademaal artikel 20bis van die Versekeringswet, 1943, voorsiening maak vir die beveiliging van premies ontvang deur agente, makelaars en ander persone ten behoeve van geregistreerde versekeraars en wat betrekking het op korttermynversekeringsbesigheid in die Republiek gedryf;

En nademaal artikel 20bis (2) (a), (b) en (3) soos volg bepaal:

- "(2) (a) Elke sodanige agent, makelaar of persoon moet voordat hy aan enige versekeraar verskuldig raak, binne die periode by regulasie voorgeskryf sekerheid stel vir enige bedrag wat deur hom aan versekeraars ooreenkomstig subartikel (3) betaalbaar mag word, en sodanige sekerheid moet in die vorm wees van 'n waarborg uitgereik deur—
- (i) 'n versekeraar wat geregistreer is om garansiebesigheid te dryf ooreenkomstig 'n waarborgfasiliteit geskep deur die korttermynversekeringsbedryf;
 - (ii) die Land- en Landboubank van Suid-Afrika; of
 - (iii) 'n bankinstelling wat anders as voorlopig geregistreer is ingevolge die Bankwet, 1965 (Wet No. 23 van 1965).
- (b) So 'n waarborg moet ten gunste van die Suid-Afrikaanse Versekeringsvereniging en in 'n by regulasie voorgeskrewe vorm ten bate van al die betrokke versekeraars wees, en wel vir 'n bedrag wat volgens die sertifikaat van die betrokke agent, makelaar of persoon se ouditeur gelyk is aan 20 persent van die premies wat deur so 'n agent, makelaar of persoon in sy jongste boekjaar aan geregistreerde versekeraars verskuldig geword het, maar bedra nie minder as R10 000 of meer as R50 000 000 nie: Met dien verstande dat die waarborg wat deur 'n agent, makelaar of persoon gestel staan te word wat vir die eerste maal aan 'n versekeraar verskuldig geword het, gebaseer moet wees op 20 persent van 'n redelike beraming van premies wat aan geregistreerde versekeraars verskuldig sou word in sy eerste boekjaar.
- (3) Elke sodanige agent, makelaar of persoon wat sodanige premies ten behoeve van 'n versekeraar ontvang, moet—
- (a) sy aantekeninge van premie-ontvangste afsluit nie later nie as die laaste dag van die maand wat volg op die maand waartydens die betaaldatum van sodanige premies voorgekom het;
 - (b) die bedrag van die premies aan die versekeraar betaal binne tien dae na die afsluiting van die aantekeninge in paragraaf (a) bedoel; en
 - (c) gelyktydig so 'n versekeraar voorsien van 'n gespesifiseerde bordereau ten opsigte van 'n betaling ingevolge paragraaf (b).";

EN NADEMAAL VAN.....

adres

(synde 'n agent, makelaar of persoon ingevolge artikel 20bis (2) (a) hierbo) (hieronder die "agent" genoem) vereis word om 'n waarborg ingevolge artikel 20bis (2) (a) en (b) van voormelde Wet te verstrek vir enige bedrag wat deur sodanige agent aan versekeraars ooreenkomstig subartikel (3) betaalbaar mag word;

EN NADEMAAL

adres

synde—

- * (i) 'n versekeraar wat geregistreer is om garansiebesigheid te dryf ooreenkomstig 'n waarborgfasiliteit geskep deur die korttermynversekeringsbedryf;
- * (ii) die Land- en Landboubank van Suid-Afrika; of
- * (iii) 'n bankinstelling wat anders as voorlopig geregistreer is ingevolge die Bankwet, 1965 (Wet No. 23 van 1965)

(* skrap wat nie van toepassing is nie)

ingevolge artikel 20bis (2) (a) en (b) (hieronder die "waarborggewer" genoem) ooreengekom het om sodanige waarborg te verstrek en vir hierdie doel

hoedanigheid

identiteitsnommer

gemagtig het om hierdie waarborg te teken en te verstrek, soos blyk uit 'n resoluë van die waarborggewer gedateer hierby aangeheg;

SO IS DIT DAT HIERBY SOOS VOLG GETUIG WORD:

1. Dat genoemde waarborggewer hierby waarborg dat genoemde agent die bepalings van subartikel (3) (b) sal nakom en alle premies aan sodanige versekeraars ooreenkomstig subartikel (3) (b) sal oorbetal, en indien sodanige agent versuim om dit te doen, sal die waarborggewer op aanvraag ingevolge artikel 20bis (2) (b), aan, of aan die order van die Suid-Afrikaanse Versekeringsvereniging by..... 'n bedrag betaal wat nie R..... (.....) rand te bowe gaan nie en wat verskuldig en betaalbaar is deur genoemde agent aan genoemde versekeraars ingevolge artikel 20bis (3) (b) van genoemde Wet. 'n Sertifikaat onder die hand van die Hoof Uitvoerende Beampste van die Suid-Afrikaanse Versekeringsvereniging wat die bedrag verskuldig en betaalbaar aan genoemde versekeraars aantoon en verklaar dat genoemde agent versuim het om die voornoemde bedrae aan genoemde versekeraars ingevolge artikel 20bis (3) (b) te betaal, moet genoemde aanvraag vergesel en sal *prima facie* bewys wees van die bedrae aldus verskuldig en betaalbaar en die versuim van die agent om die bedrae te betaal.
2. Dat die waarborggewer hierby afstand doen van die voordele *beneficium ordinis seu excussionis et divisionis* en homself ten volle vertrouwd verklaar met die betekenis en gevolg hiervan.
3. Hierdie waarborg kan deur die waarborggewer beëindig word na vier maande skriftelike kennisgewing aan die Suid-Afrikaanse Versekeringsvereniging en aan genoemde agent, geadresseer aan die adresse wat hierbo verskyn, maar ten opsigte van enige aanspreeklikheid wat voor genoemde beëindiging uit hierdie waarborg voortspruit, bly hierdie waarborg van krag en in werking.
4. Hierdie waarborg is nie verhandelbaar of oordraagbaar nie.
5. Die waarborggewer kies as sy *domicilium citandi et executandi* die adres hierbo aangedui.

Gedateer te op hede
die dag van 19.....

Namens en ten behoeve van die waarborggewer"; en

GUARANTEE

[Section 20bis (2) (a), (b) and (3) of the Insurance Act, 1943]

Whereas section 20bis of the Insurance Act, 1943, provides for the safeguarding of premiums received by agents, brokers and other persons on behalf of registered insurers and relating to short term insurance business carried on in the Republic;

And whereas section 20bis (2) (a), (b) and (3) provides that:

- "(2) (a) Every such agent, broker or person shall before becoming indebted to any insurer furnish security, within the period prescribed by regulation, for any amount which may become payable by him to insurers in terms of subsection (3), and such security shall be in the form of a guarantee issued by—
- (i) an insurer registered to carry on guarantee business in terms of a guarantee facility created by the short term insurance industry;
 - (ii) the Land and Agricultural Bank of South Africa; or
 - (iii) a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act No. 23 of 1965).
- (b) Such guarantee shall be in favour of the South African Insurance Association for the benefit of all such insurers and shall be in a form prescribed by regulation and shall be for an amount certified by the auditor of the agent, broker or person concerned to be equal to 20 per cent of the premiums which became due to registered insurers by such agent, broker or person in his last financial year but not less than R10 000 or more than R50 000 000: Provided that the guarantee to be furnished by an agent, broker or person who becomes indebted to any insurer for the first time, shall be based on 20 per cent of a reasonable estimate of premiums which would become due to registered insurers in his first financial year.
- (3) Every such agent, broker or person who receives such premiums on behalf of an insurer shall—
- (a) close off his records of premium receipts not later than the last day of the month following the month during which the due date of such premiums occurred;
 - (b) pay the amount of such premiums to the insurer within ten days after closing the records referred to in paragraph (a); and
 - (c) simultaneously furnish such insurer with a detailed payment bordereau in respect of a payment in terms of paragraph (b).";

AND WHEREAS.....

address

(being an agent, broker or person in terms of section 20bis (2) (a) above) (hereinafter referred to as the "agent") is required to furnish a guarantee in terms of section 20bis (2) (a) and (b) of the aforesaid Act for any amount which may become payable by him to insurers in terms of subsection (3);

AND WHEREAS.....

address

being—

* (i) an insurer registered to carry on guarantee business in terms of a guarantee facility created by the short term insurance industry;

* (ii) the Land and Agricultural Bank of South Africa; or

* (iii) a banking institution registered otherwise than provisionally in terms of the Banks Act, 1965 (Act No. 23 of 1965)

(* Delete whichever is not applicable)

in terms of section 20bis (2) (a) and (b) (hereinafter referred to as the "guarantor") has agreed to furnish such guarantee and for this purpose has authorised

capacity

identity number

to sign and furnish this guarantee, as will appear from a resolution of the guarantor dated annexed hereto;

NOW THEREFORE THESE PRESENTS WITNESS:

1. That the said guarantor hereby guarantees that the aforesaid agent shall comply with the provisions of subsection (3) (b) and shall pay all premiums to such insurers in terms of subsection (3) (b) and if the said agent shall fail to do so, the guarantor shall pay on demand in terms of section 20bis (2) (b), to, or to the order of the South African Insurance Association at an amount not exceeding R (.....rand) which is due and payable by the said agent to the said insurers in terms of section 20bis (3) (b) of the said Act. A certificate under the hand of the Chief Executive of the South African Insurance Association showing the amount due and payable to the said insurers and stating that such agent has failed to pay the aforesaid amounts to such insurers in terms of section 20bis (3) (b), shall accompany such demand and shall be *prima facie* proof of the amounts so due and payable and the failure of the agent to pay the same.
2. That the guarantor hereby renounces the *beneficium ordinis seu excussionis et divisionis* with the meaning and effect of which he declares himself to be fully acquainted.
3. This guarantee may be terminated by the guarantor upon four months' written notice to the South African Insurance Association and to the said agent addressed to the addresses shown above, but, in respect of any liability which arose prior to such termination, this guarantee shall remain of full force and effect.
4. This guarantee shall be neither negotiable nor transferable.
5. The guarantor chooses as its *domicilium citandi et executandi* his address indicated above.

Dated at, this of 19.....

.....
For and on behalf of the guarantor"; and

Byvoeging van Vorm R.V. 9

7. Die volgende vorm word hierby by die vorms van die Regulasies gevoeg:

“Vorm R.V. 9

SERTIFIKAAT VAN BEDRAG VAN WAARBORG WAT DEUR 'N AGENT, MAKELAAR OF PERSOON INGEVOLGE ARTIKEL 20bis (2) (b) VAN DIE VERSEKERINGSWET, 1943, VERSTREK MOET WORD

NAAM VAN AGENT, MAKELAAR OF PERSOON:

.....
(Voeg in die naam van die agent, makelaar of persoon in artikel 20bis (2) (b) van die Wet bedoel.)

BOEKJAAR GEËINDIG.....

1. Die totale bedrag van bruto korttermynversekeringspremies min kommissies wat gedurende die jaar verskuldig geraak het aan geregi-
streerde versekeraars en versekeraars by Lloyds het R bedra.
2. Bedrag van waarborg benodig:
20 persent van R..... R
3. Min bedrag van waarborg wat tans van krag is R
4. Bedrag van bykomende waarborg benodig R

.....
DATUM

.....
HANDTEKENING VAN AGENT, MAKE-
LAAR OF PERSOON

Waarmerking deur ouditeur(s) —

Ek/Ons verklaar dat na my/ons beste wete en oortuiging en in ooreenstemming met die boeke van die agent, makelaar of persoon en ander inligting deur my/ons ingewin, die inligting in die opgawe hierbo vervat, juis is.

.....
HANDTEKENING VAN OUDITEUR(S)

.....
NAAM VAN OUDITEUR(S) IN HOOF-
LETTERS

.....
DATUM”.

8. Hierdie regulasies tree op 1 Januarie 1990 in werking.

Addition of Form R.V. 9

7. The following form is hereby added to the forms to the Regulations:

"Form R.V. 9

**CERTIFICATE OF AMOUNT OF GUARANTEE TO BE FURNISHED BY AN AGENT, BROKER OR PERSON
IN TERMS OF SECTION 20bis (2) (b) OF THE INSURANCE ACT, 1943**

NAME OF AGENT, BROKER OR PERSON:

.....
(Insert name of agent, broker or person referred to in section 20bis (2) (b) of the Act.)

FINANCIAL YEAR ENDED

1. The aggregate amount of gross short term insurance premiums less commissions which became due to registered insurers and underwriters at Lloyd's during the above year amounted to R
2. Amount of guarantee required:
20 per cent of R..... R
3. Less amount of guarantee in force at present R
4. Amount of additional guarantee required R

DATE

.....
SIGNATURE OF AGENT, BROKER OR
PERSON

Attestation by auditor(s)—

I/We state that to the best of my/our knowledge and belief and according to the books of the agent, broker or person and other information obtained by me/us the information contained in the above statement is correct.

.....
SIGNATURE OF AUDITOR(S)

.....
NAME OF AUDITOR(S) IN BLOCK LETTERS

.....
DATE".

8. These regulations shall come into operation on 1 January 1990.

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Finansies, Departement van Goewermenskennisgewing		
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