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Microinsurance in the context of social protection:

Overcoming the barriers of economic growth and development.

by

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DECLARATION OF ORIGINALITY

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LIST OF ABBREVIATIONS

ASISA	Association for Savings and Investments South Africa
B-BBEEE	Broad-based Black Economic Empowerment
CoFI	Conduct of Financial Institutions Bill
FAIS	Financial Advisory and Intermediary Services Act
FIA`	Financial Intermediaries Association of South Africa
FICA	Financial Intelligence Centre Act
FSCA	Financial Sector Conduct Authority
FSR Act	Financial Sector Regulation Act
LTIA	Long-term Insurance Act
PPR	Policyholder Protection Rules
TSAR	Tydskrif vir die Suid-Afrikaanse reg
SASSA	South African Social Security Agency
STIA	Short-term Insurance Act
TCF	Treating Customers Fairly
THRHR	Tydskrif vir Hedendaagse Romeins-Hollandse Reg
UIF	Unemployment Insurance Scheme

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CHAPTER 1
DEFINING MICROINSURANCE AND DETERMINING THE NEED FOR MICROINSURANCE

1.1 Introduction

South Africa faces a disconcerting reality that many South Africans do not have access to the financial services sector's benefits. This is why the National Treasury decided to reform the financial sector by prioritising access to financial services, specifically in the insurance sector. The vision is to establish a financial sector which is fully inclusive and representative of the people of South Africa.[1]

However, unlike the Mzansi Accounts initiative[2] that provided access to many previously unbanked people, the challenge of inclusion in the insurance sector is more complicated than were anticipated by the National Treasury and the Regulator.[3]

According to the 2015 FinScope surveys, the overall financial inclusion levels in South Africa grew by 1% since 2014. This 1% includes the bank segment, especially in the areas of savings, credit and insurance.[4] South Africa has a population of 59 169 171[5] people, of which only 18 500 000 people are insured. However, only 6 600 000 enjoy the benefits of non-funeral cover. Furthermore, 13 700 000 out of the 18 500 000 people who are insured would rather spend money on loan instalments instead of insurance policies and investments.[6]

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[1] National Treasury, Republic of South Africa, "The South African Microinsurance Regulatory Framework" (2011), p i. <http://www.treasury.gov.za/publications/other/MicroinsuranceRegulatoryFramework/Policy%20Document%20Micro%20Insurance.pdf> (accessed 16 March 2020).
[2] Will not be discussed in this dissertation.
[3] *Supra* (n 1).
[4] Finscope, South Africa 2015 Consumer survey (2015) <http://finmark.org.za/finscope-south-africa-2015-consumer-survey-brochure/> (accessed 16 March 2020).
[5] Worldometers, "South African population" <https://www.worldometers.info/world-population/south-africa-population/> (accessed 23 April 2020).
[6] *Supra* (n 4, p 9).

All South Africans understand the importance of personal risk insurance. However, the understanding thereof does not necessarily translate into responsible behaviour.[7] There is a need for affordable insurance products amongst South Africans. This should go hand in hand with strengthened consumer protection measures to ensure that policies are only sold by licensed financial service providers. Unregulated entities should not be allowed to abuse policyholders.[8]

Implementing better, affordable and strengthened insurance products will help South Africans live a safer and more fulfilling life by growing their wealth and providing protection against unforeseeable daily risks.[9] It is important to note that the banking initiative focusses on credit, savings and transactional products. In contrast, microinsurance only focuses on risk-management products designed to meet the needs of lower-income households.

1.2 Problem Statement

Many South Africans, especially those with low incomes, remain excluded from the formal financial services and products market. This is ironic as low-income households are more exposed to unforeseen economic shocks. They are also more likely to be unable to recover from the unexpected financial impact thereof. Low-income households live in riskier environments and are vulnerable to numerous threats including theft, fire, accidental death, disability and illnesses when compared to the rest of the population. They are also the least able to cope when a crisis presents itself as they are the least likely to have any savings to deal with these crises.[10] Vulnerability and poverty cause a downward spiral of misfortune when reinforcing each other.[11]

Microinsurance has been considered the next revolution in addressing the vulnerability and risk associated with low-income households in developing countries such as

[7] *Supra* (n 1).
[8] *Ibid.*
[9] *Supra* (n 1, p ii).
[10] Churchill C (2006) *Protecting the poor: A microinsurance compendium* Vol 1: Geneva: International Labour Organisation, p 12.
[11] *Ibid.*

South Africa.[12] Development agencies have made considerable investments to break the poverty cycle by offering functional financial security to the poor.[13]

Currently, informal stokvels and burial societies are used by the low-income population to mitigate their financial risk in the event of the materialisation of an economic shock - such as the death of a family member which is likely to leave them vulnerable to these unregulated financing schemes. Every South African should enjoy the benefits of an inclusive, stable and regulated financial market.

A well-designed regulatory framework is essential for the efficient and effective provision of microinsurance services. Consumers in the microinsurance market are already vulnerable to risk. They cannot survive additional risks, such as the possibility of claim-failures flowing from an ill-designed and unregulated framework.[14] For an insured to benefit from an insurance product, the process of an insurance claim should be simple, premiums should be affordable, and no unnecessary obligations should be placed on the insured.

That is one side of the coin. The other side of the coin is whether insurers can accomplish the aims set out for microinsurance products, whilst remaining profitable.

The problem statement is addressed by looking at the definition of microinsurance and the difference between microinsurance and traditional insurance.

1.3 Traditional Insurance vs Microinsurance

It is essential to define microinsurance concisely and appropriately. The definition will have an impact on the regulation thereof.

Firstly, to define microinsurance, one should distinguish it from traditional insurance.

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[12] Morduch J (2006) *Micro-insurance: the next revolution?:* Oxford University Press, p 1.

[13] Platteau JP, De Bock O and Gelade W "The demand for microinsurance: A literature Review" (2017 Vol. 94) *World Development Journal,* p 139.

[14] Wiedmaier-Pfister M "Regulation and supervision of microinsurance" (2004) Division 41 Financial System Development, p 1 <https://microinsurancenetwork.org/sites/default/files/Regulation_and_Supervision_in_Microinsurance.pdf> (accessed 05 May 2020).

1.3.1 Traditional Insurance

One of the most economical and efficient methods of creating financial security is to transfer and spread risk (1) amongst several people (2) who are all exposed to the same risk and (3) who are prepared to make a relatively small contribution towards neutralising the detrimental effects of such risk, (4) which is likely to materialise for any one or more of them. This process is known as insurance in the economic sense of the word.[15]

In *Lake v Reinsurance Corporate Ltd*[16] insurance is defined as "a contract between an insurer and an insured, whereby the insurer undertakes in return for the payment of a price or premium to render to the insured a sum of money, or its equivalent, on the happening of a specified uncertain event in which the insured has some interest".[17]

In order to provide for the different forms of insurance, an insurance contract can also be described as a contract to reimburse an insured for patrimonial loss, or a contract to console an insured for non-patrimonial loss upon the occurrence of an uncertain event insured against.[18]

Damage, risk and insurable interest form part of the fundamental concepts of a contract of insurance.[19] In *Gordan and Getz on the South African Law of Insurance*, the *essentialia* of a contract of insurance includes insurable interest.[20] In *Littlejohn v Norwich Union Fire Insurance Society,*[21] Wessel J confirmed that insurable interest is the object of insurance. He attempted to clarify and define the principle of insurable interest as follows: "If the insured can show that he stands to lose something of an appreciable commercial value by the destruction of the thing insured, then even though he has neither a jus in re nor a jus ad rem to the thing insured his interest will be an insurable one."[22] However, in *Phillips v General Accident Insurance Company,*[23]

[15] Reinecke MFB, van Niekerk JP and Nienaber PM (2013) *South African Insurance Law*: LexisNexis, p 3.
[16] *Lake v Reinsurance Corporate Ltd* 1967 (3) SA 124 (W).
[17] *Ibid.*
[18] *Supra* (n 15, p 76).
[19] Moller H "Modern Trends in the theory of international insurance law" (1976 Vol 59) *TSAR.*
[20] Davis DM (1931) *Gordan and Getz: The South African Law of Insurance:* Juta, p 175.
[21] *Littlejohn v Norwich Union Fire Insurance Society 1905* TH 374.

[22] *Phillips v General Accident Insurance Company (SA) Ltd 1983 (4) SA 652 (W).*
[23] *Ibid*

the court rejected the existence of insurable interest as an *essentiale* of an insurance contract, describing it as a foreign doctrine.

From the above-mentioned case law, it is clear that the definition of insurable interest should be interpreted in the broader sense. The abovementioned definition of insurable interest does not make provision for a risk pertaining to non-financial loss. Hence it seems to be of more value to look at insurable interest in the case of both indemnity and non-indemnity insurance respectively.

1.3.1.1 Indemnity insurance

In the case of indemnity insurance, the insured will enjoy cover against a risk of possible patrimonial damage. For the existence of an insurable interest in the case of a claim for patrimonial damage, the insured needs to prove that he or she suffered actual damages as a result of an event insured against. For the existence of an insurable interest in indemnity insurance, it is not required for an insured to have any personal rights in respect of an insured object nor is it required for the event insured against to happen to the insured personally. As long as the insured can prove that he or she will be worse off if the risk materialises and the insured object is damaged or destroyed, an insurable interest exists.[24]

1.3.1.2 Non-indemnity insurance

Non-patrimonial damages and non-indemnity insurance goes hand in hand.[25] With non-indemnity insurance, it is almost impossible to determine the exact financial or commercial value of the risk that is being insured. Hence the insurer undertakes to pay a specified amount to the insured on the occurrence of an event insured against, such as death.[26]

Non-indemnity insurance is distinguished from wagers by the actual existence of an insurable interest, which interest serves as the object of the insurance.[27] Despite insurable interest being judicially challenged within the context of indemnity

[24] *Refrigerated Trucking (Pty) Ltd v Zive* (Aegis Insurance Co Ltd, Third Party) 1996 (2) SA 361 (T).
[25] *Supra* (n 15, p 59).
[26] *Ibid.*
[27] *Supra* (n 20, p 175).

insurance,[28] there is still no leading decision with regards to insurable interest in terms of non-indemnity insurance, and it seems as though concepts from the English law have become deeply rooted in the South African law of insurance by virtue of trade usage.[29]

1.3.2 Microinsurance: The next revolution and product innovation or a return to the roots

Microinsurance is a term that is not well known, or well defined. The Microinsurance Regulatory Framework refers to microinsurance as "insurance that is accessed by the low-income population, provided by a variety of different providers and is managed in accordance with generally accepted insurance practice".[30] Churchill defines microinsurance as "the protection of low-income people against specific perils in exchange for regular premium payments proportionate to the likelihood and cost of the risk involved".[31]

In the second volume of *Protecting the Poor* by Churchill and McCord, it is said that even though the last-mentioned definition of microinsurance is a useful conceptual definition, it is not comprehensive, as it does not contain clear distinctions. They list four main ways to establish an operational definition of microinsurance:

1) Target group: The first definition was established by employing a target-group approach, indicating that microinsurance was for the low-income population. However, the definition could not be used effectively as it did not provide guidance on exactly how to determine whether the "low-income" market was actually being served. It should not be left to insurers to regulate whether a prospective policyholder is sufficiently poor to qualify for a microinsurance policy.
2) Product definition: The most common operational definition uses product parameters based on the assumption that placing a cap on the sum assured or the premiums will ensure that the product is relevant only for low-income households. However, it must be noted that defining microinsurance with

[28] *Steyn v AA Onderlinge Assuransie Assosiasie Bpk 1985 (4) SA 7 (T).*
[29] Reinecke MFB, Insurable interest in the context of long-term insurance, <http://www.ombud.co.za/download-attachment/2655> (accessed 21 May 2019).
[30] *Supra* (n 1, p 15).
[31] *Supra* (n 10, p 12).

reference to benefits and premium caps can cause problems if it inhibits innovation by restricting the insurer's options in product design.

3) Provider definition: Microinsurance is also defined based on the type of organisation that can provide it, such as burial or friendly societies, formal insurers, cooperatives and community-based organisations.

4) Distribution channel: The last approach to define microinsurance is by way of the intermediary involved. If a product is distributed by microfinance institutions, low-cost retailers or organisations that reach the low-income market, it could also be considered as microinsurance by the insurer.[32]

Irrespective of the above-mentioned operational concerns in the definition of microinsurance, it is clear that microinsurance is aimed to be insurance in the economic sense of the word. Microinsurance is distinguished from traditional insurance because of its specific target on the low-income demographic of the population who previously had no access to these products. The term "microinsurance" does not refer to the entity's size providing the insurance, but rather to the extent of the individual's risk.

1.4 Financial exclusion in South Africa

Financial inclusion has gained the South African government's attention and recognition as a vehicle for sustainable and inclusive growth and development.[33] The low-income market's financial services needs are seldom met because financial services are either inaccessible, too expensive or inappropriate to low-income consumers' specific needs.

Resultantly, these communities came together to bridge the gap left by financial service industries, by sourcing self-help solutions for their money goals and needs. Groups are established by identifying people with similar financial needs, be it to invest, save, borrow or insure, and appropriate community-based platforms are subsequently created for individuals and the businesses in these communities.

[32] Churchill C (2006) *Protecting the poor: A microinsurance compendium* Vol 2: Geneva: International Labour Organisation, p 9.

[33] Finscope, South Africa 2011 Consumer survey (2011) p1 <http://www.finmark.org.za/wp-content/uploads/2016/02/Brochure_FSSA20111.pdf> (accessed 15 June 2020).

Stokvels are a perfect example of these kinds of platforms, established by the historical disadvantaged and low-income earners in South Africa and serving as a mechanism to meet their financial needs.[34]

More than 26 years post-apartheid, the unsettling part is that stokvels are still alive and thriving, with a collective annual savings of approximately R44 billion in over 820 000 stokvels.[35]

According to FinScope's consumer survey, conducted on the South African population of 16 years and older, for the period from 2004 to 2014, insurance coverage grew 6% year on year from 41% in 2004 to 60% in 2014 which included formal and informal insurance.[36] Informal insurance, such as burial societies have driven the increase in insurance amongst the most vulnerable members of society, with formal funeral cover playing a secondary role.[37]

FinScope SA 2018 fact sheet, indicates a 4% growth in insurance cover, from 60% in 2014 to 64% in 2018. This is disconcerting as the 6% annual growth rate between 2004 and 2014 drastically declined.[38] The fact sheet describes that only 23% of the 64% insurance cover is for non-funeral products and that there has subsequently been no growth in the non-funeral insurance uptake since 2017.[39] During 2017, it was recorded that 13% of the adult population used their savings or credit to cover unexpected funeral costs, and this increased to 15% during 2018.[40]

According to the Association for Saving and Investments South Africa (ASISA), provision needs to be made for R1.4m of cover if the average South African earner wants to ensure that his/her family can maintain their standard of living in the event of

[34] Finscope, South Africa's informal savings market thrives despite high financial inclusion levels (2020) <http://finmark.org.za/savings-groups-stokvels-thrive-in-south-africa/> (accessed 06 July 2020).
[35] *Ibid.*
[36] Finscope, South Africa 2014 Consumer Survey (2014), p 28 <http://www.finmark.org.za/wp-content/uploads/2016/02/Pres_Finscope2014_FNL.pdf> (accessed on 15 June 2020).
[37] *Ibid.*
[38] Finscope, South Africa Consumer 2018 results factsheet (2018), p 3 <http://finmark.org.za/finscope-south-africa-consumer-2018-results-factsheet/> (accessed 10 July 2020).
[39] *Ibid.*
[40] *Ibid.*

his/her death.[41] However, the average South African earner currently has life cover of just more than R0.5m. This leaves an average death insurance gap of more than R0.9m per life.[42]

Furthermore, in the case of an average South African earner wanting to ensure that his or her family can maintain their standard of living in the event of him/her being subject to a disability event, provision needs to be made for more than R2.1m cover.[43] However, the average South African earner only has disability cover amounting to more than R0.9m, leaving an average disability insurance gap of more than R1.1m.[44]

In the latest study by ASISA and True South Actuaries and Consultants, it was found that the insurance gap increased by 6.3% per annum since the last study was conducted in 2013.[45] During 2016, only 41% of the insurance needs were met with actual cover.[46]

It is evident from the data mentioned above that the following three issues require urgent policy intervention, namely: the promotion of better access to affordable insurance products that meet the needs of South Africans; the need for consumers to better match the products that they buy with what they understand their insurance needs to be; and lastly, to prevent exploitation of consumers due to inadequate consumer protection and unlicensed funeral parlours. [47]

Given the fact that insurance consumers in South Africa are largely underinsured, for various historical and access reasons, it is crucial to develop a more detailed understanding of the "new" microinsurance customers that could be targeted for growth, as well as the kind of changes required to get more people to buy insurance. Insurers need to understand better the changing population demographics, rapid

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[41] ASISA and True South Actuaries & Consultants, The South African insurance Gap (09 October 2016) p 18, <https://truesouth.co.za/wp-content/uploads/2014/08/True-South-ASISA-Gap-Study-2016-final1.pdf> (accessed 11 July 2020).
[42] *Ibid.*
[43] *Ibid.*
[44] *Ibid.*
[45] *Supra* (n 41, p 15).
[46] Ibid.
[47] *Supra* (n 1).

urbanisation, changing customer behaviours, and the buying preferences of a new generation of clients across the African continent.[48]

Underinsured risk leaves poor households vulnerable to serious or even catastrophic losses from adverse economic shocks.[49] Due to shocks and foregone profitable opportunities, welfare costs are substantial, contributing to persistent poverty.[50] Microinsurance has the potential to reduce these welfare costs by offering a pay-out when an insurance loss occurs. It also avoids other costly ways of coping with the shock, thereby leaving future income earning opportunities intact.[51] Therefore, being insured will minimise the need for alternative (and costly) risk-management strategies. This will positively impact poverty reduction.[52]

1.5 Methodology and Structure

While the previous paragraphs highlighted some of the microinsurance industry's challenges, this paper will provide a detailed literature review on microinsurance possibilities. The prospect of economic growth, development, and financial inclusion resulting from microinsurance will be examined and whether microinsurance presents a sustainable business opportunity.

The purpose of this dissertation is to analyse the risk-mitigating strategies in the behaviour of low-income households and to determine whether microinsurance has the potential to be used as a tool to welcome these households into the formal financial services sector. Furthermore, the aim is to also evaluate the importance of recent developments in the legal, regulatory and existing microinsurance policy framework, together with a discussion on the essence of consumer protection in the financial services sector. The potential of microinsurance to enhance financial inclusion by alleviating poverty will also be explored.

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[48] PricewaterhouseCoopers, Ready and willing: African insurance industry poised for growth (2018) p 21 <https://www.pwc.co.za/en/assets/pdf/south-african-insurance-2018.pdf> (accessed 10 July 2020).
[49] *Supra* (n 14, p 1).
[50] S Dercon "Risk, Crop choice and savings: Evidence from Tanzania, Economic development and cultural change" (1996 Vol 44(3)) University of Chicago Press, p 385 – 514.
[51] *Supra* (n 14, p 1).
[52] *Ibid.*

In conclusion, an opinion will be formed on whether microinsurance will be an acceptable risk-mitigating tool for the low-income population's financial risks and how the above-mentioned changes and developments in legislation and regulation contributed towards the inclusion of the poor into the formal financial services industry.

CHAPTER 2

SOUTH AFRICAN INSURANCE INDUSTRY REGULATORY FRAMEWORK

2.1 Introduction

South Africa's insurance industry is a fast-growing industry with many role players involved. Hence, it comes as no surprise that legislation and financial regulation in South Africa are continuously developing and changing.

It is evident from the previous chapter that significant steps must be taken in an attempt to formalise the insurance sphere and to make provision for microinsurance to enhance financial inclusion amongst the low-income South African.

National Treasury released a discussion paper in 2008 on the future of microinsurance in South Africa for public comment,[53] which resulted in the formal microinsurance sector's establishment. It subsequently released the Microinsurance policy document by National Treasury in July 2011. The discussion paper sets out the Microinsurance policy framework, a vision for regulatory enforcement, and a consumer education framework.[54] This will be discussed in the next chapter.

Further to the publishing of the abovementioned microinsurance papers and documents, there have been many changes in the financial services industry recently. This includes the Treating Customers Fairly regime, the Twin-Peaks regulatory model, the introduction of the new Insurance Act, and the second draft of the Conduct of Financial Institutions Bill.

The South African insurance industry is highly regulated and primarily governed by the Long-term Insurance Act (LTIA)[55], the Short-term Insurance Act (STIA)[56], the Financial

[53] National Treasury, Republic of South Africa, "The Future of Micro-insurance Regulation in South Africa" (2008) < http://www.treasury.gov.za/public%20comments/The%20Future%20of%20Micro-insurance%20Regulation%20in%20South%20Africa.pdf > (accessed 23 September 2020).

[54] *Supra* (n 1).

[55] Act no. 52 of 1998, referred to as the LTIA.

[56] Act no. 53 of 1998, referred to as the STIA.

Advisory and Intermediary Services Act (FAIS Act),[57] the latest Insurance Act[58] (which came partially into effect on the 1st of July 2018).

This chapter will deal with the South African financial services regulatory landscape, its underpinning legislation and the impact thereof on the insurer and the insured. It will also examine how financial inclusion is either enhanced or diminished by specific regulatory rules and requirements.

2.2 Financial services landscape of the South African insurance industry

Microinsurance is recognised as a formal financial product in South Africa, thanks to the new Insurance Act's promulgation[59] (supplemented by the policyholder protection rules, designed explicitly for microinsurance products).[60]

This chapter outlines the market and regulatory context for microinsurance in South Africa.

As the supreme law of our country, the Republic of South Africa's Constitution[61] requires that law be developed[62] and interpreted in the spirit, purport, and objectives of the Constitution.[63] The Constitution does not contain any statutory provisions that apply directly to insurance contracts, nor microinsurance contracts.

Microinsurance will provide consumers with microinsurance products. Microinsurance isn't a separate defined or regulated market. It is a subset of the current overall insurance regulatory system in South Africa. The current regulatory framework for microinsurance consist of five main pieces of legislation:

1) The Long-term Insurance Act, no. 52 of 1998
2) The Short-term Insurance Act, no. 53 of 1998
3) The Friendly Societies Act, no. 25 of 1956

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[57] Act no. 37 of 2002, referred to as FAIS Act.
[58] Act no. 18 of 2017, referred to as Insurance Act.
[59] *Ibid.*
[60] Millard D "The devil is not in the detail: On microinsurance, policyholder protection and financial inclusion" (2019 Vol 82 Issue 4) *Journal for Contemporary Roman Dutch Law*, p 584.
[61] The Constitution of South Africa, 1996 (the Constitution).
[62] *Supra* (n 61, Sec 8(3)).
[63] *Supra* (n 61, Sec 39(2)).

4) The Financial Advisory and Intermediary Services (FAIS) Act, no. 37 of 2002
5) The Co-operatives Act, no. 14 of 2005

These acts govern which insurance products may be offered by whom and set out the requirements to be met by such providers to ensure the soundness of their businesses, their products and processes. The legislation also determines who may act as intermediaries.

2.2.1 Long-term Insurance Act, Short-term Insurance Act and the PPRs

2.2.1.1 The Long-term Insurance Act

The purpose of the Long-term Insurance Act is to regulate the long-term insurance industry by providing for the registration of long-term insurers, the control of certain activities of long-term insurers and intermediaries, and for matters connected therewith.[64] The Act also prescribes rules for the registration of insurers, business and administrative practices and policies of insurers and intermediaries. The Act further creates punishable offences and prescribed penalties for non-compliance and cases of misconduct.[65] The business classes in the Long-term Insurance Act include benefits payable in the case of a life or disability event.[66]

2.2.1.2 The Short-term Insurance Act

The Short-term Insurance Act applies to the short-term insurance business. It regulates the short-term insurance industry by providing for the registration of short-term insurers, controlling certain activities of short-term insurers and intermediaries, and matters connected therewith.[67]

2.2.1.3 The Long-term and Short-term Insurance Act Policyholder Protection Rules

Policyholder Protection Rules (PPR's) were gazetted to supplement the provisions of both the Long-term Insurance Act, as well as the Short-term Insurance Act. These rules deal with standardised and obligatory disclosures, cancellation of policies, cooling-off periods, prescribed contents of insurance contracts, contractual provisions

[64] *Supra* (n 55, preamble).
[65] Nagel CJ et al (2015) Commercial Law: LexisNexis, p 343.
[66] *Ibid.*
[67] *Supra* (n 56, preamble).

deemed to be void, general content and format of policies, consequences of failure to pay premiums as well as notices, the effect of waivers and consequences of non-compliance and misconduct.

The effect of the latest PPRs on the microinsurance industry will be discussed in detail in the next chapter.

2.2.2 The Financial Advisory and Intermediary Services Act

Common law was the most important insurance law source dealing with insurance intermediaries until the advent of Financial Advisory and Intermediary Services Act in September 2004.[68]

Intermediary services are defined in the said Act to include any services with the objective to lead a client to enter into a financial transaction or involve the collection of premiums, receiving, submitting or processing of claims.[69] The Financial Advisory and Intermediary Services Act limits the provision of intermediary services and advice by financial service providers and their representatives.[70]

The Financial Advisory and Intermediary Services Act's primary legislative function is to ensure that every person authorised to provide and render financial services to a potential client or an existing client is sufficiently qualified and "fit and proper" to discharge this responsibility.[71] If this ideal is realised, it will improve the flow and quality of information in the market to ensure consumers enjoy full disclosure and protection from unqualified intermediaries.[72]

The Financial Advisory and Intermediary Services Act[73] aims to protect consumers in the financial sector. The FAIS Act provides a regulatory skeleton. The "flesh" (so to

[68] Millard D & Hattingh W (2016) The FAIS Act explained: Lexis Nexis, p 1.
[69] *Supra* (n 68, p 2).
[70] *Supra* (n 53, p 23).
[71] *Supra* (n 57, Sec 8).
[72] *Supra* (n 53, p 23).
[73] *Supra* (n 57, Sec 8).

speak) one will find in its subordinate legislation. Proper compliance, therefore, entails that there must be compliance with both the FAIS Act and its subordinate legislation.[74]

It has been said that the FAIS Act does not flow logically and that relevant matters are not grouped together. Considering the aforementioned, together with all the subordinate legislation, it is understandable why consumers, intermediaries and financial advisors find it problematic to determine their statutory rights and obligations.[75]

2.2.3 Friendly Societies Act

The Friendly Societies Act provides for the registration, incorporation, regulation and dissolution of friendly societies, built on member-interest as legal persons.[76] Burial societies constitute the majority of registered friendly societies in South Africa.

"Friendly society" is defined as an association of persons established for any of the objects specified, or any business carried out under a scheme or arrangement instituted for any of those objects. [77]

These objects are listed in section 2 of the Act as to provide relief or maintenance during minority, old age, widowhood, sickness or other infirmity, whether bodily or mental, of members or their husbands, wives, widows, widowers, children or other relatives or dependants;[78] granting of annuities;[79] the insurance of a sum of money to be paid or other benefit to be provided in event of birth,[80] death,[81] towards the expenses in connection with the death or funeral of any member or any such person;[82] or during a period of confined mourning by a member or such a person;[83] insurance against fire;[84] provision of a sum of money on an employee being dismissed, resigned

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[74] *Supra* (n 68, p 57).
[75] *Ibid.*
[76] Millard D (2013) Modern Insurance Law in South Africa: Juta, p 23.
[77] Act no 25 of 1956, referred to as the Friendly Societies Act, Sec 1.
[78] *Supra* (n 77, Sec 2(1)(a)).
[79] *Supra* (n 77, Sec 2(1)(b)).
[80] *Supra* (n 77, Sec 2(1)(d)(i)).
[81] *Supra* (n 77, Sec 2(1)(d)(ii)).
[82] *Supra* (n 77, Sec 2(1)(d)(iii)).
[83] *Supra* (n 77, Sec 2(1)(d)(iv)).
[84] *Supra* (n 77, Sec 2(e)).

or otherwise;[85] relief or maintenance for unemployment or distressed circumstances, otherwise than in consequence of the existence of a strike or lockout;[86] the provision of sums of money for the advancement of the education or training;[87] such other business as the Minister may by proclamation in the Gazette declare to be business in respect of which a friendly society may be established.[88]

Friendly societies, such as burial societies, provide a form of risk pooling amongst members through contributions by the society and pay-outs in the event of death. Friendly societies are allowed to guarantee the insured benefit, but only up to a maximum of R5 000.00 cover, without registering as an insurer in terms of the Long-term Insurance Act.[89]

The introduction of microinsurance will most probably mean the end of friendly societies. Given the very nature of friendly societies, they will most probably find it difficult to compete with micro-insurers if they have to comply with the same burdensome requirements that insurers have to comply with. [90] It is proposed that the Friendly Societies Act be repealed. Non-compliance, in effect, means compromised protection to its members.[91]

2.3 The changing financial landscape

Even though the Financial Advisory and Intermediary Services Act, together with the Long-term and Short-term Insurance Act, has proven to be useful regulatory tools, there is always room for improvement. The most recent changes in the financial landscape in South Africa must, therefore, be considered. They are the new Insurance Act, the Financial Sector Regulation Act (which gave effect to the Twin Peaks regulatory model), and the much-publicised "Treating the customers fairly" enactments.

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[85] *Supra* (n 77, Sec 2(f)).
[86] *Supra* (n 77, Sec 2(g)).
[87] *Supra* (n 77, Sec 2(h)).
[88] *Supra* (n 77, Sec 2(i)).
[89] *Supra* (n 53, p 24).
[90] *Supra* (n 76, p 24).
[91] *Supra* (n 1, p 5).

2.3.1 The Insurance Act

Significant sections of the Long-term Insurance Act and the Short-term Insurance Act have been withdrawn and replaced by the new Insurance Act.[92] Section 62 of the Long-term Insurance Act and section 55 of the Short-term Insurance Act were not repealed. These sections make provision for the Policyholder Protection Rules, enabling the authorities to promulgate instruments to protect policyholders.[93]

The Insurance Act seeks to provide a consolidated legal framework for the prudential supervision and regulation of microinsurance business, to endorse financial inclusion and to promote the maintenance of fair, safe and stable insurance markets.[94]

The Insurance Act has a strong prudential focus, and that is probably the most marked difference between the Insurance Act and the Long-term Insurance Act and the Short-term Insurance Act.

It is therefore evident that the primary regulation of the South African insurance industry shifted to the Insurance Act[95] and the Policyholder Protection Rules, especially with regards to market conduct.

As per figure 1.1 below, South Africa's financial service regulation has evolved drastically during the past decade. The sector must be stable and well-regulated, and it must assist in stimulating economic growth. Accessibility for all South Africans is a prerequisite for growth.

[92] *Supra* (n 58).
[93] *Supra* (n 60, p 587).
[94] *Supra* (n 58).
[95] *Supra* (n 58).

Figure 1.1[96]

South Africa initiated a review of the financial regulatory system in 2007. It resulted in a policy paper titled "*A safer financial sector to serve South Africa better*".[97] The move towards the Twin Peak model of financial regulation was central in the reform.[98] The reform process will of necessity involve amendments to existing legislation, the enacting of new legislation and the consolidation of standards and regulations in the financial sector.[99]

2.3.2 The Twin Peaks model (FSR Act and CoFI Bill)

The Twin Peaks model, together with the Financial Sector Regulation Act and the Conduct of Financial Institutions Bill[100] are products of international influence on lawmakers and their quest to find the ideal regulatory framework for optimal consumer protection in the insurance industry.[101]

The Financial Sector Regulation Act[102] established two new authorities in 2018, each with a dedicated mandate. The one is the Prudential Authority[103] functioning under the

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[96] FSB Twin Peaks Newsletter, Issue 1, The South African Perspective <https://www.fsca.co.za/TPNL/1/FSB/thephilosophy.html> (accessed 10 October 2019).

[97] National Treasury, Republic of South Africa, *"A safer financial sector to serve South Africa better"* (policy paper, 23 February 2011)<http://www.treasury.gov.za/twinpeaks/20131211%20-%20Item%202%20A%20safer%20financial%20sector%20to%20serve%20South%20Africa%20better.pdf> (accessed 24 October 2019).

[98] Godwin A "Introduction to special issue – the twin peaks model of financial regulation and reform in South Africa" (2018) *Law and Financial Market Reviews.*

[99] *Ibid.*

[100] Conduct of Financial Institutions Bill, referred to as CoFI Bill.

[101] Millard D "The impact of the twin peak model on the insurance industry" (2016 Vol 19) Potchefstroomse Elektroniese Regsblad, p 1 – 37.

[102] Act no. 9 of 2017, referred to as the FSR Act.

[103] Referred to a PA.

auspices of the South African Reserve Bank. The other is the Financial Sector Conduct Authority[104](formally known Financial Services Board).[105] The next step in the roll-out of the Twin Peaks regulatory system is the implementation of the Conduct of Financial Institutions Bill. The said Bill, is aimed at strengthening and reforming the financial sector, specifically the insurance industry.

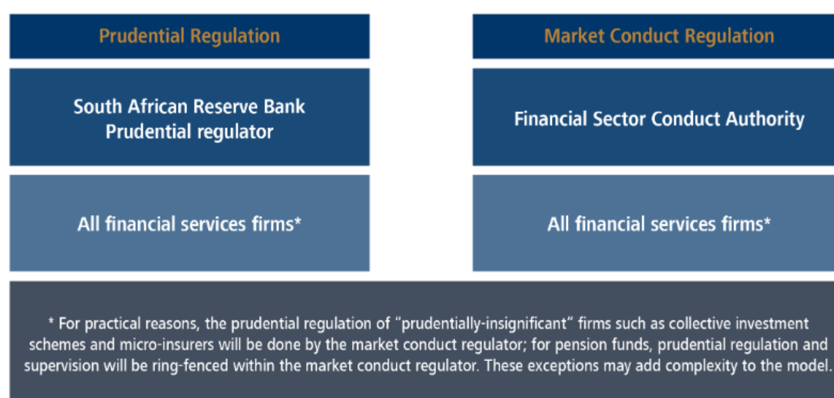
The Financial Sector Regulation Act[106] is the most recent legislation impacting on the insurance industry. This Act is the first step towards implementing the Twin Peaks model. It is also referred to as the "Twin Peaks Act". The FSR Act defines the roles and explains to financial institutions and consumers what to expect of financial sector regulators. The CoFI Bill,[107] on the other hand, focuses on the conduct of financial institutions and outlines what consumers and industry players can expect from financial institutions.

Market conduct refers to how financial service providers conduct their business, how they treat their customers and design and price their products.[108] The question arises as to whether all these changes and new legislation will ultimately contribute positively towards enhanced market-conduct in the insurance industry. The ancillary question is, will insurers still be able to operate in a viable manner?

As per figure 1.2 below, the Prudential Authority is mandated to regulate the financial soundness of financial institutions, while the FSCA is mandated with the aspects of market conduct which includes the Policyholder Protection Rules. Insurers will therefore be subjected to two supervisors and two sets of law - prudential and market conduct standards, respectively.

[104] Referred to as the FSCA.
[105] Referred to as the FSB.
[106] *Supra* (n 102).
[107] *Supra* (n 100).
[108] *Supra* (n 101).

Figure 1.2 [109]



Twin Peaks aim to make continuous improvements to the current regulatory framework by adopting a forward-looking and outcome-focused approach. This will allow for a strong focus on market conduct, informed by the Treating Customers Fairly framework.[110] This will strengthen and transform the financial sector. It will also bring local laws in line with global norms to ensure financial stability and better protection of financial services customers.

The FSR Act empowers the FSCA to issue conduct standards for a range of financial sector activities including product design, distribution, marketing and disclosure to ensure improved market conduct outcomes in the South African financial sector. A significant emphasis is placed on governance arrangements within financial institutions to ensure the realisation of the FSCA objective of fair outcomes for financial customers.[111]

The FSCA is primarily responsible for regulating the relationship between insurance companies and policyholders. It deals primarily with matters pertaining to compliance – issues such as product features and standards, advertising, claims handling and dispute resolution.

The FSR Act operates as an "overlay" over the existing sectoral laws. Hence all financial service providers currently regulated by the FSCA, are subjected to sectoral laws as amended by the FSR Act as well as any new conduct standards developed

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[109] *Supra* (n 96).
[110] *Ibid.*
[111] *Ibid.*

under the said Act. This will be the position until the CoFI Bill becomes law. At that stage, all current licenses will be converted to market conduct licenses.[112]

The market conduct of financial institutions will be measured against the principles of TCF. Section 7 of the FSR Act suggests that it is the objective of the Act to achieve a stable financial system that works in the interest of financial customers and supports balanced and sustainable economic growth, by establishing, in conjunction with the specific financial sectoral laws, a regulatory and supervisory framework that promotes:
(a) financial stability;
(b) the safety and soundness of financial institutions;
(c) the fair treatment and protection of financial customers;
(d) the efficiency and integrity of the financial system;
(e) the prevention of financial crime;
(f) financial inclusion;
(g) transformation of the financial sector; and
(h) confidence in the financial system.[113]

Furthermore, section 57(b) of the FSR Act states that the objective of the FSCA is to protect financial customers by promoting fair treatment of financial customers by financial institutions.[114] The entrenched value of fairness is further evident from section 106(3)(c) that authorises the FSCA to issue conduct standards to ensure fair treatment and financial customers' protection.[115]

It is also clear from section 58(1)(i) and (j) that the objectives of the FSR Act can only be achieved if the FSCA monitors the extent to which the financial system is delivering fair outcomes for financial customers with a focus on the fairness and appropriateness of financial products and financial services and the extent to which they meet the needs and reasonable expectations of financial customers together with the

[112]Masthead, Mastering Compliance Newsletter “Twin Peaks Newsletter, Issue 2: The FSB Approach” <https://www.masthead.co.za/newsletter/twin-peaks-newsletter-issue-2-fsb-approach/> (accessed 20 October 2019).
[113] *Supra* (n 102, Sec 6).
[114] *Supra* (n 102, Sec 57(a)).
[115] *Supra* (n 101).

implementation of strategies and programs for financial education for the general public.[116]

During December 2018 National Treasury released the draft Conduct of Financial Institutions Bill[117]. This Bill follows the establishment of the Twin Peaks regulatory regime in South Africa, initiated by the FSR Act's commencement. The CoFI Bill establishes the regulatory framework for the supervision of financial institutions' conduct through the Financial Sector Conduct Authority.[118]

High fees, the multiplicity of incomprehensible charges, the design and sale of inappropriate products, complex products and weak disclosure and transparency are just a few examples of the poor market conduct against which financial services consumers require protection.[119] Unfair treatment and poor market conduct by financial service providers towards their consumers undermine steps taken to make the financial sector more accessible to South Africans so as to improve financial inclusion. The CoFI Bill aims to rectify this.[120]

2.3.2.1 Design of the CoFI Bill

Principles-based

The CoFI Bill sets out the specific standards and intention of the law and regulation. The Bill does not provide for a set of prescriptive rules. This methodology (standards and intention) ensures that the "spirit of the law" is paramount.

This will allow the Regulator to monitor and enforce the outcomes to be achieved by financial service providers.[121] The focus on outcomes should result in a shift in both

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[116] *Supra* (n 102, Sec 58(1)(i) & (j)).
[117] *Supra* (n 100).
[118] South African Reserve Bank, "Financial Stability Review, First Edition" (2019)<https://www.resbank.co.za/Lists/News%20and%20Publications/Attachments/9276/FSR%20First%20Edition%202019.pdf> (accessed 14 October 2019).
[119] *Ibid.*
[120] National Treasury, Republic of South Africa, "Treating customers fairly in the financial sector: A Draft market conduct policy framework for South Africa, discussion document" (2014) <http://www.treasury.gov.za/public%20comments/FSR2014/Treating%20Customers%20Fairly%20in%20the%20Financial%20Sector%20Draft%20MCP%20Framework%20Amended%20Jan2015%20WithAp6.pdf> (accessed 23 October 2019).
[121] The CoFI act takes the financial services sector to a new era, 26 June 2019 <https://www.bizcommunity.com/Article/196/518/192449.html> (accessed on 24 October 2019).

the industry and the regulator to ensure that their actions are geared towards achieving specific outcomes. It is, therefore, no longer a question of technical compliance with the law only.[122]

This does not mean the absence of rules or detailed requirements, but rather an appropriate mixture of principles and rules which will empower the regulator to set standards through the Bill.[123]

Outcomes- focussed

The Twin peak model of financial sector regulation steers away from the traditional "tick the box" approach and focusses more on an outcomes-focused approach. It is supported by principles-based legislation, supervision and regulation.[124]

The Cofi Bill, once enacted, will assist in realising the intended policy outcomes. It provides for interventions in the case of poor outcomes. It also provides for a monitoring mechanism to determine the extent to which the outcomes were achieved. Financial institutions can decide on their own processes and actions; there are no prescribed compliance processes. However, the Regulator will test the institution on the delivery of the required outcomes and the effectiveness in supporting the economy and providing the correct and fair customer outcomes.[125]

This requires that the market conduct of licensed financial institutions, the financial sector regulatory framework, and the FSCA's effectiveness be tested against the desired financial sector outcomes.[126]

[122] Parliamentary Monitoring Group, Conduct of Financial Institutions (COFI) Bill 2018- draft (2018) <https://pmg.org.za/call-for-comment/784/> (accessed 14 October 2019).
[123] *Supra* (n 112).
[124] *Supra* (n 97).
[125] *Supra* (n 122).
[126] *Supra* (n 121).

Activity-based

To close the gaps in the current legal framework, the Bill provides for the regulation and supervision of activities undertaken irrespective of the financial institution performing the activity.[127]

Accordingly, the focus will be on the activities being performed, instead of the institutions being registered under a sectoral law. The same law will apply per activity rather than per institution.[128] This will create a level playing field amongst financial institutions, taking into consideration each institution's size and risk profile.[129]

Risk-based and proportionate

The Bill provides for a risk-based approach when monitoring outcomes. This will allow the regulator (1) to identify significant risk areas and (2) to address these risks given the size and regulatory capacity of the institution. At the same time, it will encourage new entrants to enter the market by reducing entry barriers.[130]

A differentiated risk-based approach makes it easier for new entrants to enter the market - different types of licensing will apply to different types of companies.[131] In that sense, it will foster competition amongst new and established institutions.

Transformation

All financial institutions are required to design, publish and implement a transformation policy in compliance with the B-BBEEE Code and to report to the regulator on how they are meeting the set target in terms of the Bill.[132] The FSCA is responsible for supervising the implementation of these policies.[133]

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[127] *Ibid.*
[128] On the scale of 3 of 2019, Conduct of Financial institutions bill January 2019 <http://ppfkaapkerk.co.za/ppfdoks/2019_OTS_03.pdf> (accessed 04 November 2019).
[129] *Supra* (n 112).
[130] *Supra* (n 128).
[131] *Supra* (n 112).
[132] *Ibid.*
[133] *Supra* (n 100, Sec 38).

2.3.2.2 The provisions of the Bill

Objectives and application of the Bill

CoFI aims to simplify, harmonise, streamline, and consolidate the legal framework for financial institutions' regulatory conduct. This will include the implementation of Treating Customers Fairly principles. It will give legislative effect to the market conduct policy approach.[134] Some of the existing market conduct provisions for the financial services sector will be significantly transformed by COFI once promulgated. Some of the existing statutory provisions will not be re-enacted. Others will be amended and/or consolidated in the interest of clarity.[135]

The CoFI Bill is primarily based on objectives aligned with the fair treatment of customers, whilst simultaneously addressing the need for market conduct regulation to go beyond the mere fair treatment of financial customers. Accordingly, the legislative objective underpinning the CoFI Bill is aimed at promoting transformation and financial inclusion.[136]

Treating customers fairly

Providing more protection to customers in the financial sector and improving market conduct extends beyond establishing a new regulator. The 2014 discussion document (published along with the FSR Bill) *"Treating Customers Fairly in the Financial Sector: A Draft Market Conduct Policy Framework for South Africa"* sets out the following pillars:

1) Structural reform of regulatory agencies;
2) Revised and streamlined legal framework for market conduct;
3) Responding to poor conduct practices in the financial sector;
4) Better empowered customers through education initiatives and dispute resolution channels to resolve customer complaints.[137]

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[134] *Supra* (n 122).

[135] Holland C, Assisting clients prepare for the Conduct of Financial Institutions Bill <https://www2.deloitte.com/za/en/pages/risk/articles/deloitte-assisting-clients-prepare-for-the-conduct-of-financial.html> (accessed 18 October 2019).

[136] Govender S, A Fintech Take on the Conduct of Financial Institutions Bill, (2019) <https://www.polity.org.za/article/a-fintech-take-on-the-conduct-of-financial-institutions-bill-2019-02-05> (accessed 31 October 2019).

[137] *Supra* (n 120).

Although the existing legislative and regulatory framework already provides for the application of TCF principles, there will be explicit overarching market conduct legislation in future that will deal with TCF.[138]

The *"Treating customers Fairly principles"* are embedded into the CoFI Bill. The Financial Sector Conduct Authority's approach requires financial institutions to demonstrate fair outcomes for financial customers rather than just ticking the proverbial "compliance box".

The *"Treating customers Fairly principles"* transformed the supervision of market conduct by financial institutions. It is an activities-based, cross-cutting and outcomes-driven approach to ensure that all financial service providers apply specific fairness standards to all financial customers.

Financial service providers are accordingly required to demonstrate that fair play, protection of customers and access to financial services and products are fully integrated into their business practice on all levels of the business and that they deliver on the below-specified outcomes:[139]

1) Customers can be confident that they are dealing with firms where TCF is central to the corporate culture of the firm;
2) Products and services marketed and sold in the retail market are designed to meet the needs of identified customer groups and are targeted accordingly;
3) Customers are provided with clear information and are kept appropriately informed before, during and after the point of sale;
4) Where advice is given, it is suitable and takes account of customers' circumstances;
5) Products perform as firms have led customers to expect, and that services are rendered to an acceptable standard; and
6) Customers do not face unreasonable post-sale barriers imposed by firms to change product, switch product, submit a claim or make a complaint.[140]

[138] *Ibid.*
[139] Walker A, Anyone for another Cuppa CoFI, (2019) <http://www.compass.co.za/anyone-for-another-cuppa-cofi> (accessed 06 October 2019).
[140] *Supra* (n 55, Policyholder Protection Rules, 2017).

Culture and governance[141]

In terms of the Bill's current provisions, a financial institution's governing body will be accountable for compliance with the Act (once it becomes law) and failure to comply can result in personal liability and accountability.[142] Accordingly, it is required from all financial institutions to implement a governance policy that will deal with the following: Remuneration, roles and responsibilities, compliance procedures, transformation, management procedures, record keeping, conflict of interest and marketing.[143]

The Bill requires that institutions conduct their business with integrity, care, due skill and diligence, and manage any conflict of interest whilst acting in customers' best interest. Institutions must be able to demonstrate to the regulator how they will achieve this. [144]

Financial products and services[145]

Financial institutions must promote the supply of products that take into consideration and are appropriate given the customers' needs and circumstances while facilitating flexibility, innovation and efficiency.[146] There should be written procedures in place dealing with the design of new financial products and services. Senior management should sign off on all new products and services to ensure compliance with the Bill's requirements.[147]

Promotion, marketing and disclosure[148]

This section of the Bill requires senior management to sign off on all marketing material and to ensure that adequate and clear information is provided to financial customers before, during, and after the sale of the product or service.[149]

[141] *Supra* (n 100, Ch 3).
[142] *Ibid,* Sec 9.
[143] *Ibid*, Sec 31.
[144] *Ibid,* Sec 30.
[145] *Ibid,* Ch 4.
[146] Ibid, Sec 49.
[147] Ibid, Sec 48(8)(b).
[148] Ibid, Ch 6.
[149] Ibid, Sec 57.

Licensing

In terms of chapter 2 of the Bill, licenses will be granted on three levels, i.e. products involved, activities being performed and targeted customers. Institutions will accordingly hold one license with authorisation to perform various activities.[150]

Once the Bill is promulgated, financial institutions licensed under the current financial sector will have its licenses appropriately converted (1) according to the Act's provisions and (2) according to a specific institution's activities.[151]

The CoFI Bill represents the culmination of industry discussions, reviews and proposed frameworks emanating from the need for extensive reform of the market conduct regulatory framework applicable to the South African financial services sector.

National Treasury has expressed its desire to grow financial inclusion within South Africa, and accordingly, consumer education will take centre stage during this reform process.[152] The Twin Peaks model is crucial and long overdue for creating an environment that stimulates fair, efficient and transparent financial markets.

The CoFI Bill imposes rigorous requirements for fair treatment of financial customers. The "proportional approach" referred to above will ensure that outcomes are appropriate considering the different levels of risks arising from different types of activities. It will also create a level playing field for institutions of different sizes and different risks to customers. This will reduce the potential for regulatory arbitrage or avoidance and will ensure the protection of financial customers.[153]

Clients must be treated fairly and reasonably according to the TCF principles embedded in the Bill. Furthermore, financial customers must be educated on the products, benefits and price, and each product must be designed according to the needs of the targeted market. Treating clients fairly and assessing the outcome of each complaint and compliance requirement ensures that clients enjoy a safer

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[150] Ibid, Ch 2.

[151] BryteSA, The COFI Bill (2019) <https://www.brytesa.com/pdf/Policies/The_COFI_Bill-August-2019.pdf> (accessed 01 November 2019).

[152] Faurie J "A new playing field with the introduction of the FSCA" (June 2018) *FIA.*

[153] *Supra* (n 97).

environment when doing business in the financial sector. Financial consumers will subsequently be more confident and comfortable to conduct business in the financial sector, knowing that the CoFI Bill protects them.

The South African financial sector conduct requirements are currently spread across 13 different pieces of legislation. The CoFI Bill aims to consolidate the said fragmented legal framework with a particular emphasis on the TCF principles. I believe that harmonising the different sectoral laws into one piece of legislation will enhance the ability of customers, intermediaries and financial advisors to understand and apply the law.

2.4 Conclusion

National Treasury has expressed its desire to grow financial inclusion within South Africa, and accordingly, consumer education will take centre stage during this reform.[154] The Twin Peaks model is crucial and its implementation long overdue for creating an environment that stimulates fair, efficient and transparent financial markets.

If the CoFI Bill is promulgated and applied according to the legislature's intentions (and following the principles set out in the Explanatory Policy Paper), the Bill will contribute positively towards improved market conduct outcomes. It will also markedly improve the protection offered to financial consumers. Moving away from the "tick the box" approach to an outcome-based approach will ultimately result in financial service providers being held accountable for their conduct.

The ultimate success of CoFI's will depend on the regulator's ability to carry out its mandate competently. The question remains whether the CoFI Bill overregulates insurers. If so, will microinsurance products make financial sense considering all the costs and expenses pertaining to compliance with the legislation and regulations? Time will tell.

[154] *Supra* (n 152).

In the next chapter, the conceptual policy framework and standards for microinsurance products will be discussed. This will provide one with a holistic view of the cost of compliance requirements. We must also take cognisance that product limitations make it even more difficult for insurers to mitigate their risks. Again, this has an impact on business sustainability and profitability.

CHAPTER 3
MICROINSURANCE CONCEPTUAL POLICY FRAMEWORK AND STANDARDS

3.1 Introduction

It is evident from the previous chapter that there have been significant reforms in the regulatory environment as far as the South African financial sector is concerned – among other things to provide for financial inclusion and microinsurance products.

Following the 2008 discussion paper by National Treasury, entitled *"The Future of Microinsurance in South Africa", "The South African Microinsurance Regulatory Framework Policy Document"*[155] was published on the 28th of July 2011. The suggested policy framework aims to address the daunting task of providing access to insurance for lower-income South Africans. The policy document provides an exposition of the most critical policy considerations which will inform microinsurance legislation.[156]

Microinsurance is referred to as "insurance that is accessed by the low-income population, provided by a variety of different providers and managed in accordance with generally accepted insurance practice. It forms part of the broader insurance market, distinguished by its particular focus on the low-income market, which translates into distinct means of product design and distribution."[157]

The new and proposed legislation aims to assist low-income consumers that suffer from financial exclusions by:

1) promoting better access to affordable insurance products that counter the risks that low-income consumers face;
2) better matching consumers' needs with appropriate products; and
3) protecting consumers from abuse with appropriate measures.[158]

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[155] *Supra* (n 1).
[156] *Supra* (n 76, p 24).
[157] *Supra* (n 1, p 3 - 4).
[158] *Supra* (n 1, p i – iii).

Traditional insurance standards as set out in the Long-term and Short-term Insurance Act[159] will have to be revised to make it possible to realise the ideals set out above.

The Long-term and Short-term Insurance Acts play a vital role in traditional insurance products sold to the middle- and high-income markets. However, the proposed microinsurance dispensation needs to achieve the following objectives of the policy document:

1) to extend access to formal insurance products, accordingly promoting financial inclusion;
2) to formalise insurance products offered by informal and unlicensed providers;
3) to lower the barriers for providers to enter the industry, so as to promote competition;
4) to ensure consumer protection through appropriate regulation; and
5) to facilitate effective supervision and enforcement.[160]

To achieve these objectives, certain product features and standards are envisioned. There are fifteen (15) product features and standards proposed in the policy document, which typify a product as a microinsurance product, determining the prudential requirements applicable.[161]

3.2 Microinsurance Policy Framework

The definition of microinsurance should facilitate the development of a dynamic microinsurance market in South Africa. To be able to achieve that the said definition should:

1) deal with services demanded by the low-income market;
2) have a sufficiently low prudential risk and be straightforward to distribute.[162]

Accordingly, the policy document sets out certain product features and standards to achieve the said aim and objectives, as discussed below.

[159] *Supra* (n 56).
[160] *Supra* (n 1, p 3 - 4).
[161] *Supra* (n 1, p 7 - 15).
[162] *Supra* (n 1, p 6).

<u>3.2.1 Microinsurance product features and standards</u>

For a product to qualify as one of microinsurance, there are certain features and standards it needs to comply with.

3.2.1.1 Risk only

A microinsurance product may only provide for a risk-benefit, there may not be a surrender value, nor a savings component included. A risk-only product provides cover against a specified risk event or a combination of risk events.[163]

3.2.1.2 Benefits provided on a sum assured basis

Policy benefits for all microinsurance policies must be defined on a first loss or sum assured basis.[164] First loss insurance refers to insurance providing a defined benefit upon a defined event, as opposed to indemnity insurance that indemnifies the insured of the actual value of the loss suffered.[165] Accident, health, liability, and asset microinsurance policies must consequently disclose the monetary cap as well as how many claims may be made within the duration of the contract.[166]

3.2.1.3 Defined benefit caps

There will be defined financial limits applicable, depending on the nature of the microinsurance policy.[167] The defined benefit caps will apply severally to each person insured under a policy with one insurer.[168] Where more than one person is insured under a single policy, the defined caps will apply severally to each insured, and not collectively to the policy as a whole.[169] The application of a separate benefit cap to each of the categories of policies will enable the policyholder to enjoy more than one form of cover by a single insurer, for example:[170]

1) Insurance related to a death event is capped at a maximum benefit of R50 000 per insured life, per insurer,

[163] *Supra* (n 1, p 7).
[164] *Ibid.*
[165] *Ibid.*
[166] *Supra* (n 1, p 8).
[167] *Ibid.*
[168] *Ibid.*
[169] *Ibid.*
[170] *Ibid.*

2) A maximum benefit of R100 000 per person, per insurer, per contract period for all insurance on assets only, (the R100 000 is applicable per person and not per asset)
3) All other risk events are capped at a maximum benefit of R50 000 per insured life, per insurer.

There is no minimum limit set for a policy benefit. Any single microinsurance policy may accordingly provide any benefit amount totalling the maximum cap set for each category. All limits are applicable per insured, on all policies bought from a particular insurer, and not to the total value of cover for any single person across various insurers. Claims may be paid out in a single lump sum or instalments, depending on the insurance contract.[171]

3.2.1.4 Maximum contract term

The contract term for microinsurance policies is capped in terms of the policy document at a maximum of 12 months. Subject to policyholders continuing to pay their policy premiums, it is suggested that microinsurance policies should automatically be renewed at the end of each contract period, without the requirement of new policy documents or waiting periods, to ensure uninterrupted cover.[172]

3.2.1.5 No selective non-renewal within group policies

The insurer will not be able to cancel individual microinsurance policies within a group of policies selectively. The insurer will have to cancel the entire group of polices.[173] Should the insurer wish to increase the policy premium, the entire group's premiums must be increased. For this to happen, the insurer must provide the group with a three-month notice of its intention to increase the premiums. If this is not acceptable, the insurer will be entitled to cancel the group policy.[174]

3.2.1.6 Actuarial certification of premiums

Initial pricing and subsequent pricing of microinsurance policies must be signed off by an actuarial technician, based on verifiable risk considerations.[175]

[171] *Supra* (n 1, p 9).
[172] *Supra* (n 1, p 10).
[173] *Ibid.*
[174] *Ibid.*
[175] *Ibid.*

3.2.1.7 Waiting periods

The policy document also addresses waiting periods for microinsurance policies. It proposes a maximum waiting period of 6 months for disability or death due to natural causes for policyholders younger than 65 years upon entry, as is the case for any long-term insurance product.[176] No waiting periods may apply for accidental death or disability due to no risk of adverse selection being present.[177]

Policyholders that move between insurers may adversely be affected by this imposition of waiting periods.[178] In these cases, the risk of adverse selection has been dealt with, and the rationale for imposing a waiting period falls away.[179] Hence, should a policyholder cancel an insurance policy with one insurer and replaces it with an insurance policy with similar cover with another insurer, the new insurer may not impose further waiting periods. The insured must enjoy uninterrupted cover.[180] However, the new insurer may request a certificate from the previous insurer, confirming the previous cover as well as the completion of the waiting period.

3.2.1.8 Exclusions

A particularly interesting feature of microinsurance products is that no exclusions will be allowed for pre-existing conditions.[181] However, standard exclusions for suicide will be allowed to ensure consistency and fairness.[182]

3.2.1.9 Simplification

Microinsurance policy documents must be simple, easy to understand and in plain language. They must further avoid confusion and not be misleading.[183]

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[176] *Supra* (n 1, p 12).
[177] *Ibid.*
[178] *Ibid.*
[179] *Ibid.*
[180] *Ibid.*
[181] *Ibid.*
[182] *Ibid.*
[183] *Ibid.*

3.2.1.10 Right to a monetary benefit

Where in-kind benefits are offered in microinsurance policies, the policyholder must be given the option between the monetary benefit and the in-kind benefit, both being equal to the stated value the insurance contract had provided for.[184]

It is required from the insurer to disclose the value of the monetary benefit upfront. The insurer must ensure that the face value of the monetary benefit and the in-kind benefit is the same.[185] This will avoid abuse as well as unfair treatment of policyholders.[186]

3.2.1.11 Claims payment

The policy document requires all valid microinsurance claims to be paid within 48 hours after the insurer received all the required documentation.[187]

3.2.2.12 Grace period

Due to the irregular income stream of people in the informal sector and seasonal workers, the policy document made provision for a grace period in microinsurance policies.[188] To ensure that microinsurance policyholders are not unduly disadvantaged by their irregular cash flow, the policy document proposed that a grace period be applied if a premium is not paid when it is due.[189]

It is proposed that cover will continue for one month after the premium falls due, without any compromise to the cover and that the outstanding premium be paid at any time during that month. Failure to make payment during the month of grace, the cover will cease.[190] Policies which have been in place for 12 months or more, will enjoy a more extended grace period.[191] It is suggested that these policies will enjoy one extra month of a grace period for each completed 12 months, up to a maximum grace period

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[184] *Supra* (n 1, p 13).
[185] *Ibid.*
[186] *Ibid.*
[187] *Supra* (n 1, p 14).
[188] *Ibid.*
[189] *Ibid.*
[190] *Ibid.*
[191] *Ibid.*

of 6 months.[192] Should a claim arise during the grace period, the insurers will be allowed to subtract the sum of unpaid premiums from the claimed amount.[193]

3.3 Microinsurance product standards in terms of 2018 PPRs

The Insurance Act[194] provides the legal framework for microinsurance. The PPRs, on the other hand, contain the rules that address microinsurance's contractual aspects. The 2004 rule on protecting the rights of policyholders was amended during 2018, more specifically, on the 1st of January 2018.[195]

Together with the Insurance Act, the STIA and the LTIA PPRs ensures that products are designed in such a manner as to support an improved consumer understanding of the different insurance products. The Insurance Act introduces new authorisation classes for the industry. Under this Act, micro-insurers may offer life and non-life insurance. Life insurance includes classes such as credit life insurance, risk insurance and funeral cover. Non-life insurance includes motor insurance, property insurance, legal expense, as well as accident and health insurance.

Due to the Insurance Act[196] only coming into force on the 1st of July 2018, further amendments to the 2018 PPRs were implemented.[197] Rule 2A was inserted into the PPRs for the Long-term and Short-term Insurance Acts. Rule 2A in the Short-term Insurance Act is entitled: *"Microinsurance product standards."*[198] Rule 2A in the Long-term Insurance Act PPRs is entitled: *"Microinsurance and Funeral Policy Product Standards"*.[199] Against this background, it is necessary to examine the material impact of Rule 2A on the fundamental principles of both non-life and life insurance.

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[192] *Ibid.*
[193] *Ibid.*
[194] *Supra* (n 58).
[195] Replacement of Policyholders Protection Rules (GN 1407 in Government Gazette 41321 of 15 December 2017) and Replacement of the Policyholder Protection Rules (GN 1433 in Government Gazette 41329 of 15 December 2017).
[196] *Supra* (n 58).
[197] *Supra* (n 60, p 589).
[198] GN 996 of 28 September 2018 (1 October 2018).
[199] GN 997 of 28 September 2018 (1 October 2019).

3.3.1 Non-life insurance

3.3.1.1 Overview

Rule 2A.1 of the PPRs[200] defines a "microinsurance policy" as a non-life insurance policy entered into by a micro-insurer.[201] The remainder of the rule refers to the prescribed structure of the policy benefits.[202]

3.3.1.2 Structure of policy benefits

South African insurers and consumers are not obliged to enter into industry standardised agreements. Insurers are free to determine policy benefits following the general principles of insurance law. Accordingly, parties are free to decide on the insurable object, the premium, and the insurance contract term.

3.3.1.2.1 Contract term and monetary caps

Contrary to the above, Rule 2A.4.1 stipulates that the contract terms for a microinsurance policy may not exceed 12 months. The value of the microinsurance policy benefit is capped at the Prudential Authority's maximum amount.[203]

The introduction of monetary caps on microinsurance policies gives effect to the basic principle of microinsurance, namely that the value of the policy may not exceed a certain maximum amount.[204] Rule 2A.4.3 states that the contract must either be automatically renewed or automatically terminated as per the PPR requirements upon the ending of the microinsurance policy term.[205]

The applicable monetary caps on microinsurance policies gives effect to the principle of microinsurance, being that the value of the policy should not exceed a prescribed maximum amount.[206] In an attempt to determine if the introduction of a 12-month term serves any purpose in protecting microinsurance policyholders, it is required to determine whether the policy is payable in advance or 12 equal monthly instalments.

[200] *Supra* (n 56, Policyholder Protection Rules, 2017).
[201] *Supra* (n 200, Rule 2A.1).
[202] *Supra* (n 60, p 589).
[203] *Supra* (n 200, Rule 2A.4.2).
[204] *Supra* (n 60, p 589).
[205] *Supra* (n 200, Rule 2A.4.3).
[206] *Supra* (n 60, p 589).

If it is the case that the premium is payable in 12 equal monthly instalments, the microinsurance policy does not differ from other ordinary short-term insurance policies, as all short-term insurance policies are annually renewable.[207]

3.3.1.2.2 Average clause

An average clause serves to discourage underinsurance and ensure that a policyholder does not benefit from paying a lower premium due to being underinsured[208]. The average clause stipulates that in the case of underinsurance, the policyholder should only be compensated proportionately.[209]

In ordinary short-term insurance contracts, an average clause forms part of the *naturalia* of the short-term insurance policy.[210] Rule 2A.4.4 however, states that a microinsurance policy may not make any of its policy benefits subject to the principle of average.[211]

This does not mean that underinsurance is not possible with microinsurance, but simply that average may not be applied. It will, therefore force insurers to utilise other techniques to ensure that accurate values are placed on insurable objects.[212]

3.3.1.2.3 Variation and renewal

Rule 2A.5.1 states that the terms, conditions or provisions of a microinsurance policy may not be changed or varied during the first 12 months after the inception of the policy unless the micro-insurer can demonstrate that there are reasonable actuarial grounds to change or vary the terms, conditions or provisions of the microinsurance policy. Alternatively, that the variation will be to the benefit of the policyholder or member of a group scheme concerned.[213] Furthermore, the variation should be done

[207] *Supra* (n 60, p 590).
[208] *Supra* (n 15, p 501).
[209] *Supra* (n 15, p 502).
[210] *Supra* (n 65, p 373).
[211] *Supra* (n 200, Rule 2A.4.4).
[212] *Supra* (n 60, p 590).
[213] *Supra* (n 200, Rule 2A.5.1).

following Rules 11.6.3 and 11.6.4 of Rule 2A.[214] This rule applies regardless of whether a microinsurance policy has been renewed or not.[215]

Rule 2A.5.3 stipulates that where a microinsurance policy is underwritten on a group basis, the micro-insurer may not selectively cancel or selectively decline to renew individual policies that form part of the group of people underwritten on a group basis. The basis of these specific rules is fairness. All participants in a group scheme should be treated similarly.[216]

3.3.1.2.4 Waiting periods

A waiting period in an insurance contract is a time period which has to elapse before a benefit will be paid. During the waiting period, the cover and premiums continue, but the benefits are not payable.[217]

Rule 2A.6 limits the imposition of waiting periods for microinsurance policies. This is understandable because the contract term for a microinsurance policy is limited to 12 months. A waiting period means that policyholders receive no value for money during this time.[218]

Rule 2A.6.1 stipulates that a microinsurance policy underwritten under the accident and health class of non-life insurance business may not impose a waiting period exceeding 6 months or one-quarter of the contract term, whichever is the shortest.[219] This rule only applies for benefits payable in the occurrence of a death, disability or health event resulting from natural causes.[220] It is submitted that this rule does not differ much from any other accident or health policy and does not offer much protection.[221]

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[214] *Supra* (n 200, Rule 2A.5.1(b)).
[215] *Supra* (n 200, Rule 2A.5.2).
[216] *Supra* (n 200, Rule 2A.5.3).
[217] *Supra* (n 15, p566).
[218] *Supra* (n 60, p 591).
[219] *Supra* (n 140, Rule 2A.6.1).
[220] *Supra* (n 60, p 591).
[221] *Ibid.*

Where death, as an event, is not caused by natural causes but by an accident, a microinsurance policy may not impose a waiting period at all, nor may any waiting periods be applied when a microinsurance policy is renewed.[222]

Waiting period for microinsurance group schemes are regulated in terms of Rule 2A.6.5, which stipulates:
"A micro-insurer may not impose a waiting period under a microinsurance policy if the policyholder or member of a group scheme confirms that –

a) the policyholder or member of a group scheme, at least 31 days before entering into a new microinsurance policy with that micro-insurer, had a previous microinsurance policy or non-life insurance policy with another insurer;
b) the policy benefits under that previous policy provided cover in respect of similar risks as those covered under the new microinsurance policy; and
c) the policyholder or member of a group scheme had completed the waiting period in respect of that previous policy." [223] *(Insurance Act, 17 of 2018)*

It is evident from the above that waiting periods cannot be waived entirely due to specific claims' complexity. Whether the rules on waiting periods are capable of being implemented remains to be seen.[224]

3.3.1.2.5 Reinstatement

Reinstatement of an insurance contract occurs when a policy has lapsed due to non-payment of the premium within the grace period.[225] If an insurer reinstates a policy, it is in effect a renewal of the contract on the same terms as before, and the insurer may specify formalities before considering the reinstatement of a lapsed policy.[226]

As from 1 October 2018, Rule 15.1 of the Short-term Insurance PPRs, stipulates that 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 due date and in the case of a

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[222] *Supra* (n 200, Rule 2A.6.2 & Rule 2A.6.4).
[223] *Supra* (n 200, Rule 2A.6.5).
[224] *Supra* (n 60, p 592).
[225] *Supra* (n 15, p 105).
[226] *Ibid.*

monthly policy, such provision must apply with effect from the second month of the currency of the policy.[227]

For microinsurance, Rules 2A.10.1(a) and (b) stipulate that if a microinsurance policy has lapsed due to the non-payment of premium and the micro-insurer reinstates such policy, the micro-insurer must do so on at least the same terms as the policy that had lapsed and may not impose a waiting period under the reinstated policy.

In addition, Rule 2A.10.2 stipulates that if a micro-insurer enters into a new microinsurance policy with the same policyholder or member of a group scheme within 2 months after a microinsurance policy has lapsed due to the non-payment of premium, the micro-insurer may not impose a waiting period under such new policy.[228]

This is in variance with ordinary life-insurance whereby, an insurer may at any time impose a new waiting period in the case of a reinstated- or new policy.[229]

3.3.1.2.6 Claims

Contrary to ordinary insurance contracts where an insurer is not bound to any time frames to decide on a claim, the new Rule 2A.9.1 of the PPR's states that subject to Rule 2A.9.2, a micro-insurer must, within two business 2 after all the required documents in respect of a claim under a microinsurance policy have been received, assess and make a decision whether or not the claim submitted is valid. After that, the insurer may authorise payment of the claim, repudiate the claim, or dispute the claim and, in the event of a dispute, notify the claimant of the dispute.[230]

If the insurer is disputing the claim, the insurer must, within 14 business days after expiry of the period referred to in Rule 2A.9.1, investigate the claim further and decide whether the claim submitted is valid and then pay or repudiate the claim.[231]

[227] *Supra* (n 200, Rule 15.1).
[228] *Supra* (n 60, p 596).
[229] *Supra* (n 60, p 597).
[230] *Supra* (n 200, Rule 2A.9.1).
[231] *Supra* (n 200, Rule 2A.9.2).

According to Rule 2A.9.3, a micro-insurer may not repudiate a claim under a microinsurance policy based on non-disclosure by the policyholder if the micro-insurer did not specifically request the policyholder to disclose such information before the inception of the policy.[232] This is contrary to ordinary insurance policies where the obligation rests on the insured life to make full disclosure to the insurer. Most of the required details fall within the sole knowledge of the insured life.[233]

It is submitted that the change in the rules on time frames is more strenuous than is the case in other forms of insurance. It forces insurers to deal efficiently and expeditiously with claims. However, the rule on non-disclosure is a game-changer for all insurers in the South African insurance industry.[234]

For ordinary insurance products, there are multiple rules on non-disclosure. Rule 2A draws a line through the entire concept of non-disclosure.[235] The judgment *in Mahadeo v Dial Direct* has now been codified into statutory law for microinsurance non-life products.[236] By stipulating that if an insurer deems certain information relevant to the risk, those questions need to be asked very specifically by the insurer.

3.3.1.2.7 Excess

The purpose of an excess payment is that of clarification, as it merely makes it clear to a policyholder that one must bear the first portion of the loss himself.[237] Policyholders usually have the option to select a bigger excess payment with a smaller premium or a smaller excess payment with a bigger premium.[238]

Excess payments should be proportionate to the loss. The new rules stipulate that excess payments in microinsurance policies may only provide one standard excess per risk event.[239]

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[232] *Supra* (n 200, Rule 2A.9.3).
[233] *Supra* (n 60, p 596).
[234] *Ibid.*
[235] *Ibid.*
[236] *Mahadeo v Dial Direct 2008 4 SA 80 (W).*
[237] *Supra* (n 15, p242).
[238] *Supra* (n 60, p 594).
[239] *Supra* (n 200, Rule 2A.8.1).

As per Rule 2A.8.2, if excess is payable under a microinsurance policy, such excess must be disclosed to a policyholder or member of a group scheme, or a potential policyholder or potential member of a group scheme following Rules 11.4.1, 11.5.1 and 17.10.[240] The fact that excess payments will form part of the insurance contract must be disclosed to prospective policyholders before entering the insurance contract.[241] These rules regulate pre-contractual disclosure of all contractual terms, including excess payments.

Rule 17.10 specifically regulates disclosures on excess payments and stipulates as follows:

"Where any excess is payable by the policyholder, the excess-

a) must be clearly disclosed to the policyholder as required by Rules 11.4.2(d)(iii) and 11.5.1(c)(iii);
b) must be disclosed to the claimant as required by Rule 17.8.3;
c) must be fair and reasonable; and
d) may not constitute an unreasonable barrier to a claimant, taking into account the reasonably assumed circumstances and expectations of the average targeted policyholder and claimant in respect of the policy concerned."[242]

It seems like there is an overlap between the stipulations in Rule 2A for microinsurance policies and those for ordinary policies.[243]

Rule 2A.8.3 states that where excess is payable under a microinsurance policy in respect of which the aggregate value of the policy benefits is R120 000 or less, the excess may not exceed 10% of the value of the policy benefits or R1 000, whichever is the smaller amount.[244]

Where the aggregate value of the policy benefits exceeds R120 000, the excess payment may not exceed 10% of the value of the policy benefits, payable for the risk

[240] *Supra* (n 200, Rule 2A.8.2).
[241] *Supra* (n 60, p 594).
[242] *Supra* (n 200, Rule 17.10).
[243] *Supra* (n 60, p 594).
[244] *Supra* (n 60, p 595).

event as set out in the policy.[245] An additional stipulation in the new rules provides for an annual, inflation-linked escalation of these values.[246]

3.3.1.2.8 Exclusions

In an insurance contract, an exclusionary clause refers to any clause that excludes the insurer's liability.[247] Insurers and their agents must bring exclusion clauses to policyholders' attention, and parties need to agree expressly.[248]

The new Rule 2A.7.1 stipulates that a microinsurance policy in respect of which the aggregate value of the policy benefits is R120 000 or less, may not impose any exclusions or conditions limiting the liability of the micro-insurer, other than the exclusions or conditions relating to unlawful conduct, provided that such exclusions may only be applied or relied on if there is a direct link between the cause of the loss.[249]

Prohibitions on exclusions are contained in Rule 2A.7.2, which states the following:
"A microinsurance policy in respect of which the aggregate value of the policy benefits exceeds R120 000 may impose exclusions or conditions, in addition to those set out in Rule 2A.7.1(a) to (f), limiting the liability of the microinsurer if the microinsurer is able to demonstrate that such exclusions or conditions will:

a) not unreasonably erode the value of the benefits under the policy, taking into account the nature of the policy benefits;
b) continue to render the policy being suitable for targeted policyholders; and
c) not compromise the consistent delivery of fair outcomes to the policyholders or members."[250]

3.3.1.2.9 Administration

According to Rule 2A.11.1 when a service or similar benefit as a policy benefit is provided under a microinsurance policy, a micro-insurer or any person acting on behalf of a micro-insurer may not charge the policyholder or member of a group scheme any

[245] *Ibid.*
[246] Ibid.
[247] *Supra* (n 15, p 112).
[248] *Ibid.*
[249] *Supra* (n 200, Rule 2A.7.1).
[250] *Supra* (n 200, Rule 2A.7.2).

administration or similar fee in respect of that service or similar benefit.[251] This is noticeably different from other insurance policies where administrative fees should always be disclosed as part of the transaction.[252]

3.3.2 Life insurance

Insurance is all about reallocation of risk between the insured and the insurer.[253] Risk is the possibility of a future uncertain harmful event occurring.[254] In life insurance, the archetypal harmful event or the contemplated peril is death.[255] Death, which is everyone's fate, is not uncertain.[256] What is uncertain is not if, but when death will occur.[257] Other types of life insurance perils are birth, accident, ill health or retrenchment. These events are essentially uncertain with reference to its possible occurrence as well as the time it will occur.[258]

3.3.2.1 Overview

Rule 2A.1 stipulates that a "microinsurance policy" means a life insurance policy underwritten by a micro-insurer.[259] One of the significant differences between the policyholder protection rules on non-life microinsurance and life microinsurance policies is that the rules for life insurance are the ones that are used to set funeral policy product standards.[260]

The new rules define "funeral policy" as a life insurance policy underwritten under the funeral class of life insurance business as set out in Table 1 of Schedule 2 of the Insurance Act. It is submitted that dedicated rules on funeral insurance are long overdue.[261]

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[251] *Supra* (n 60, p 597).
[252] *Ibid.*
[253] *Supra* (n65, p 340).
[254] *Supra* (n 208).
[255] *Supra* (n 15, p 553).
[256] *Ibid.*
[257] *Ibid.*
[258] *Ibid.*
[259] *Supra* (n 200, Rule 2A.7.1).
[260] *Supra* (n 60, p 597).
[261] *Supra* (n 140, Rule 2A.7.1).

3.3.2.2 Structure of policy benefits

3.3.2.2.1 Contract term and monetary caps

As is the case for non-life microinsurance, Rule 2A.4.1 and Rule 2A.4.2 of the Long-term Insurance Act PPR provide that the contract term for a life microinsurance policy may not exceed 12 months and the benefit value of the microinsurance life policy or funeral policy may not exceed the maximum amounts as prescribed by the Prudential Authority.[262]

Rule 2A.4.4 stipulates that despite the terms of an assistance policy entered into before 1 June 2009, the policyholder or policy member is entitled to demand that a policy benefit must be expressed as a sum of money.[263] Had the policy benefit been provided other than as a sum of money, then the sum of money should have been equal in value to the policy benefit that would have been provided by the insurer or any person acting on behalf of the insurer.[264]

The rule states that such policy must provide that the policyholder or policy member is entitled to demand that the policy benefit be provided as a sum of money. Subject to Rule 2A.4.6, the policy must state the exact amount of the policy benefit to be provided as a sum of money.[265] The amount of money may not be less than the value of the policy benefit.[266]

Rule 2A.4.6(a) states that where the requirements in Rule 2A.4.5(b) cannot reasonably be met due to the nature of the policy benefits, the policy must state why this is the case.[267] Rule2A.4.6(b) further states that such a policy must confirm that the policy benefit's monetary value will be determined and communicated at claims stage and disclosed to the claimant to ensure that the policyholder is aware of how the monetary value was arrived at.[268]

[262] *Supra* (n 140, Rule 2A.4.1 and 2A.4.2).
[263] *Supra* (n 140, Rule 2A.4.4).
[264] *Supra* (n 140, Rule 2A.4.4).
[265] *Supra* (n 140, Rule 2A.4.6).
[266] *Supra* (n 140, Rule 2A.4.5(b)).
[267] *Supra* (n 140, Rule 2A.4.6).
[268] *Supra* (n 140, Rule 2A.4.6(b)).

3.3.2.2.2 Variation and renewal

As per Rule 2A.5.1, the terms, conditions or provisions of a life microinsurance policy or a funeral policy may not be changed or varied during the first 12 months after the inception of the policy, unless there exist reasonable actuarial grounds to change or vary the terms, conditions or provisions of the policy.[269]

Rule 2A.5.3 states that the insurer may not selectively cancel or selectively decline to renew individual policies which form part of the group of people that are underwritten on a group basis.[270] The reason for this rule supports the objective of a group life policy, namely that the risk is underwritten for a specific group who are subjected to similar risks.[271]

3.3.2.2.3 Waiting periods

In terms of Rule 2A.6.1, a microinsurance life policy or funeral policy may not impose a waiting period exceeding the shorter one of, either one-quarter of the term of the policy or 6 months in respect of policy benefits payable on the happening of a death, disability or health event resulting from natural causes.[272]

Rule 2A.6.2 states that in the case of policies that offer benefits upon the happening of a death, disability or health event resulting from an accident, no waiting period may be imposed.[273] For micro-credit life insurance policies, Rule 2A.6.3 stipulates that the only waiting periods that may be imposed are those allowed for in regulation 4 of the credit life insurance regulations made under the National Credit Act.[274]

Micro funeral policies stipulate that such policies may not impose a waiting period when it is renewed.[275]

[269] *Supra* (n 140, Rule 2A.5.1).
[270] *Supra* (n 140, Rule 2A.5.3).
[271] *Supra* (n 60, p 599).
[272] *Supra* (n 140, Rule 2A.6.1).
[273] *Supra* (n 140, Rule 2A.6.2).
[274] Act no 34 of 2005, referred to as the Credit Act.
[275] *Supra* (n 140, Rule 2A.6.4).

3.3.2.2.4 Exclusions

According to Rule 2A.7.1 a microinsurance policy underwritten under the funeral class of life insurance business as set out in Table 1 of Schedule 2 to the Insurance Act, or a funeral policy, may not impose any exclusion for a pre-existing health condition other than through a waiting period referred to in Rule 2A.6.1.[276]

Further to the above, Rule 2A.7.2 states that a microinsurance policy or a funeral policy may not impose any exclusion for suicide for a period that exceeds 12 months from the policy's inception date.[277]

Rule 2A.7.3 states that the limitation on exclusions for suicide as set out in Rule 2A.7.2 applies regardless of whether a microinsurance policy or a funeral policy has been renewed during the 12 months referred to in Rule 2A.7.2.[278]

3.3.2.2.5 Claims: 2-days rule

Another rule that aims to enhance consumer confidence is found in Rule 2A.8.1, which stipulates that, subject to Rule 2A.8.2, an insurer must, within 2 business days after all required documents in respect of a claim under a microinsurance policy or a funeral policy have been received, assess and make a decision whether or not the claim submitted is valid, and after that authorise payment of the claim, repudiate the claim or dispute the claim and notify the claimant of the dispute.[279] This is in stark contrast to ordinary insurance contracts where an insurer is not bound to any specific regulatory time frames to decide on a claim.[280]

Furthermore, Rule 2A.8.2 requires from an insurer that in the case of a claim being repudiated or if the insurer disputes a claim, the insurer needs to take action within 14 business days after expiry of the initial 2 days, which action is to either investigate the claim further, make a decision whether or not the claim submitted is valid and pay or repudiate the claim. [281]

[276] *Supra* (n 140, Rule 2A.7.1).
[277] *Supra* (n 140, Rule 2A.7.2).
[278] *Supra* (n 140, Rule 2A.7.3).
[279] *Supra* (n 140, Rule 2A.8.1).
[280] *Supra* (n 60, p 602).
[281] *Supra* (n 140, Rule 2A.8.2).

Rule 2A.8.3 states that an insurer may not repudiate a claim under a microinsurance policy or a funeral policy on the basis that the policyholder did not disclose the necessary information if the insurer did not specifically request the policyholder to disclose that information before the inception of the policy.[282] This is contrary to ordinary insurance policies where the obligation rests on the insured to make full disclosure to the insurer, as most of the required details will be falling within the sole knowledge of the insured life.[283]

3.3.2.2.6 Reinstatement: No waiting period

As set out in Rule 2A.9.1, if a microinsurance policy or a funeral policy has lapsed due to the non-payment of premium and the insurer reinstates such policy, the insurer must do so on at least the same terms as the policy that had lapsed and may not impose a waiting period under the reinstated policy.[284]

A further stipulation on reinstatement is found in Rule 2A.9.2 which states that if an insurer enters into a new microinsurance policy or a funeral policy with the same policyholder or member within 2 months after a microinsurance policy or a funeral policy has lapsed due to the non-payment of premium, the insurer may not impose a waiting period under such new policy.[285] In contrast, an insurer in ordinary insurance may impose any waiting period on reinstated and new policies.[286]

In the final instance, Rule 2A.9.3 provides that Rule 2A.9.2 does not apply where the policyholder or member had not completed a waiting period imposed under the lapsed policy, in which case the insurer may impose a waiting period not exceeding the unexpired part of the waiting period under the lapsed policy.[287]

3.4 Conclusion

The latest PPRs and the policy document creates a sound legal framework that allows all South Africans to participate in a regulated and inclusive insurance sector. The

[282] *Supra* (n 140, Rule 2A.8.3).
[283] *Supra* (n 60, p603).
[284] *Supra* (n 140, Rule 2A.9.1).
[285] *Supra* (n 140, Rule 2A.9.2).
[286] *Supra* (n 60, p603).
[287] *Supra* (n 140, Rule 2A.9.3).

PPRs simplified certain aspects which traditionally led to disputes and costly litigation, such as the average clause and precontractual non-disclosure. However, it is submitted that these simplifications will have a significant adverse effect on insurers' financial viability and profitability.

Considering the regulatory requirements discussed in Chapter 2, it is evident that the compliance cost remains of concern for microinsurance product providers. The simplification and limitations measures set out in the PPRs, and the policy document might even worsen insurers' situation.

Only time will tell whether the legislature correctly identified the need for microinsurance, comprehensively defined it and subsequently succeeded in creating rules to manage it effectively.[288]

It is further submitted that the Twin Peaks model's implementation is much needed in the South African financial services sector, as the regulator's broader authority over financial institutions will assist in the prevention of institutional failures and the collapse of financial markets.[289] However, the challenge remains to find a balance between compliance cost and growth. An over-regulated financial services sector suppressing economic activity will not assist the low-income market.

The recent updates in the financial services sector framework and regulation are welcomed. However, it will have to be revisited if it leads to an over-regulation of the financial services sector, thus making the goal of financial inclusion practically impossible.

It is imperative for regulators to bear in mind that over-regulation and the increase in the cost of doing business will ultimately harm the goal of financial inclusion of low-income earners.

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[288] *Supra* (n 60, p 604).

[289] Jones M "Back to basics: Why financial regulatory overhaul is overrated" (2010 Vol 4 Issue 2) *Entrepreneurial Business Law Journal,* p 392.

CHAPTER 4
MICROINSURANCE AS A SOCIAL PROTECTION TOOL WHILST BEING PROFITABLE TO THE INSURER

4.1 Introduction

In South Africa, few topics elicit as much debate and opinion as South Africa's extensive social welfare programme. Eighteen million people in South Africa rely on social grants, with 20% of households depending on grants as their primary income source.[290] The number of social grants has increased by 450% if one compares the number of grants currently made to the four million social grants dispersed in 1994.[291]

The increase is of great concern, as numerous voices have often warned the Registrar and National Treasury that the national budget cannot sustain the current level of social support.[292] During 2011, former President Jacob Zuma stated that government "cannot sustain a situation where social grants are growing all the time and think it can be a permanent feature".[293] Despite this, social grants have increased, and the age threshold for those who qualify for one has been extended.[294]

4.2 The potential of microinsurance for social protection

Social protection aims to "prevent, reduce, and eliminate economic and social vulnerabilities due to poverty and deprivation."[295] These vulnerabilities are, among other things caused by a lack of protection against the financial consequences caused by a loss of income due to death, disability and sickness.[296]

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[290] The Conversation "South Africa has raised social grants: why this shouldn't be a stop-gap measure" (2020) <https://theconversation.com/south-africa-has-raised-social-grants-why-this-shouldnt-be-a-stop-gap-measure-138023#:~:text=The%20grant%20system,their%20main%20source%20of%20income> (accessed on 01 November 2020).

[291] Ferreira A, Africa Check - Fact Sheet - Social grants in South Africa – separating myth from reality (2017) <https://africacheck.org/factsheets/separating-myth-from-reality-a-guide-to-social-grants-in-south-africa/> (accessed on 01 November 2020).

[292] *Ibid.*

[293] Prinsloo J (2011) We cannot be a welfare state: Zuma <https://www.iol.co.za/business-report/economy/we-cannot-be-a-welfare-state-zuma-1185065> 23 November 2011 *IOL.*

[294] *Supra* (n 291).

[295] Wiechers T "Discussion paper: Microinsurance and Social Protection" (2013) Microinsurance Network, p5. <https://microinsurancenetwork.org/sites/default/files/Microinsurance_and_Social_Protection_FINAL_0.pdf> (accessed 23 November 2020).

[296] *Ibid.*

Social risks affect every member of society. However, it is even more challenging for low-income earners to manage and foresee the impact of these risks.[297] The lower-income market consequently depends on social protection interventions to cushion the impact of such events.[298] However, the social protection systems of most developing countries are often impenetrable or insufficiently developed.

South Africa has three significant social protection[299] and financial support systems, namely: social assistance,[300] social insurance[301] and private insurance.[302] The one characteristic they share is the fact that they are limited in their scope and limited in the protection and coverage they provide.[303]

4.2.1 Social Assistance

As previously mentioned, South Africa has an extensive social assistance programme, providing grants to more than eighteen million beneficiaries.[304] However, access to social assistance is limited, given the existing eligibility requirements and means tests. In the process, needy persons that comply with the qualifying criteria but not with the eligibility requirements, are excluded.[305]

4.2.2 Social Insurance

Examples of South African social insurance schemes are the Unemployment insurance scheme (UIF) and the Workers' compensation scheme. These schemes

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[297] *Supra* (n 295, p 6).

[298] *Ibid.*

[299] Social protection, according to the Asian Development Bank, consists of "policies and programmes designed to reduce poverty and vulnerability by promoting efficient labour markets, diminishing people's exposure to risks, enhancing their capacity to protect themselves against hazards and interruption [or] loss of income" Asian Development Bank "Social Protection Strategy" (January 2001) https://www.adb.org/documents/social-protection-strategy (accessed on 15 November 2020).

[300] The South Africa social assistance programme is financed from the general government revenues. Several types of grants aimed at needy children (Child Support Grant, Care Dependency Grant and Foster Care Grant), people with disabilities (Disability Grant) and the aged (Old Age Grant and War Veterans Grant) are available. Apart from these grants, a social relief of distress may be payable to certain qualifying individuals.

[301] Social insurance has been defined as a "mandatory contributory system of one kind or another, or regulated private-sector provision, concerned with the spreading of income over the life cycle or the pooling of risks". Committee of Inquiry into a Comprehensive System of Social Security for South Africa Transforming the Present – Protecting the Future: Consolidated Report (2002) p 36.

[302] Mpedi LG and Millard D "Bridging the gap: The role of micro-insurance in a comprehensive social-protection system in South Africa" (2010 Vol 31 Issue 3) *Obiter,* p 497 – 498.

[303] *Ibid.*

[304] *Supra* (n 302, p 498).

[305] *Ibid.*

create limitations given the fact that they use definitions such as, "employee", as found in the social insurance statute. This excludes workers from the informal sector.[306]

4.2.3 Private Insurance

South Africa has a well-developed private insurance industry. Several commercial insurance products provide social assistance for consumers that fall on hard times. They are used by persons who can afford the premiums. They are voluntarily in nature.[307] This results in the further exclusion of low-income consumers who cannot afford the premiums. The same goes for workers in the informal labour market who depend on unreliable and irregular income streams.[308] In this chapter, we will discuss whether private insurance and microinsurance will help alleviate this problem.

Vulnerable people are often unable to rise from their socio-economic situations as they are hesitant to invest excess income into productive physical capital or education. Instead, they would rather accumulate the excess income for a "rainy day" that can be accessed if a risk occurs. Usually, their savings produce only limited returns, which are insufficient to protect against financial risks.[309] Social protection aims to break the vicious cycle of poverty caused by weak and insufficient social protection and exclusion of the low-income market from the financial services sector.[310]

Microinsurance can be considered as the latest instrument to assist with social protection.[311] Conceptually, microinsurance combines social protection and microfinance. It is a financial service offered by various providers. It provides vulnerable people with social protection against the risks insured.[312]

Microinsurance is a potentially useful instrument and tool to overcome financial exclusion and enhance the poor's protection against social risks. Microinsurance aims

[306] *Supra* (n 302, p 499).
[307] *Supra* (n 302, p 500).
[308] *Ibid.*
[309] Deblon Y & Loewe M (2012) *The potential of microinsurance for social protection* in Churchill C (2012) *Protecting the Poor: A Microinsurance Compendium*, p 40.
[310] *Supra* (n 309, p 44).
[311] *Supra* (n 295, p 6).
[312] *Ibid.*

to reduce the vulnerability of the low-income earners by enabling them to manage risks more efficiently and effectively.

As a risk-pooling tool, mainly financed by premiums, microinsurance is, in essence, a horizontal redistribution of income between peers with compatible and similar risk profiles.[313] Given that microinsurance contracts are a product of a dialogue between low-income target groups and the providers, microinsurance can be very responsive to the market's specific preferences and needs.[314]

4.3 Conclusion

The long-term sustainability of South Africa’s spending on welfare is doubtful. Research has compared government revenue, since 2008, with the government’s expenditure on social grants and civil service remuneration over the same period. It was found that social grants and civil service remuneration will absorb all of the government’s income by 2026 if current expenditure trends are not reversed.[315]

Vulnerable persons, just like any other consumer in society, must come to terms with and accept the fact that they are subjected to social risks. The current level of social interventions is, unfortunately, not sustainable. The sad part is that even the current government financial support cannot adequately provide them with the required protection. Protection against these social risks, (for example, death, disability and unemployment) is required, as much for the low-income market as it is for everyone else, if not more.

If properly designed, microinsurance can extend protection and coverage currently provided by the existing social protection systems. It can constitute a way for workers in the informal economy to enjoy social safeguards.[316]

[313] *Supra* (n 309, p 49).
[314] *Ibid.*
[315] *Supra* (n 291).
[316] *Supra* (n 309, p 49).

It must be noted that microinsurance must not be seen as a substitute for social protection schemes, but rather an ancillary tool, addressing vulnerability rather than chronic poverty.[317]

4.4 Effect of compliance and regulation on profitability

As discussed in chapter 2, the FAIS Act mandates that every person authorised to provide and render financial services to a potential client or an existing client is sufficiently qualified and "fit and proper" to discharge this responsibility.[318] The Act sets a competence standard required from players in the industry.[319]

However, it is questionable whether the FAIS Act approach will work if one sets out to regulate financial service providers who want to deliver new microinsurance products.[320] It has been said that "regulation has increased the cost of advice and has contributed to the bifurcation of the market into advice and non-advice intermediation".[321] However, allowing providers to operate and provide microinsurance products in a legal environment without having to comply with the fit and proper requirements will result in consumers being put at risk.[322]

Even though the cover amounts involved with microinsurance products are lower than traditional insurance, such lower amounts remain high as far as underprivileged consumers are concerned. Yet, it is expected that microinsurance policyholders enjoy the same protection as traditional insurance policyholders in terms of fraud, misrepresentation and any other form of abuse by insurance providers.[323] Accordingly, there is uncertainty as to how regulations, which are proportional to the risks posed by microinsurance, can be established. The appropriate regulatory level for microinsurance remains a real problematic one.[324] It is submitted that appropriate

[317] *Ibid.*
[318] *Supra* (n 57, Sec 8).
[319] *Supra* (n 302, p 514).
[320] *Ibid.*
[321] *Supra* (n 10, p 403).
[322] *Supra* (n 302, p 514).
[323] *Supra* (n 302, p 515).
[324] *Supra* (n53, p12).

regulation is the key to the success of any proposed microinsurance legislation in South Africa.[325]

4.4.1 Effect of regulation on innovation

The South African financial regulatory landscape has evolved significantly over the years, with more stringent requirements being placed on insurance companies and its employees. This has led to trenchant criticism that regulation is stifling financial innovation.[326]

The need to protect consumers lies at the heart of financial regulation, and this is the focal point of all the regulatory instruments. The South African financial sector's statutory conduct requirements are currently spread across 13 different pieces of legislation. It is noteworthy that only two of these pieces of legislation refer to the importance of encouraging development in the insurance services industry. None make any specific reference to the promotion of financial innovation.[327] Regulation should be viewed positively, but instead, it is seen as an impairment.[328]

4.4.2 Barriers experienced by insurers,

Insurers are beginning to take note of the large underserved low-income market. However, they are experiencing tremendous obstacles in reaching this market and providing them with a quality product.[329] One of the primary obstacles is the transaction and operation costs involved in managing large volumes of policies with small premiums.[330]

Insurers are required to incur substantial expenses when marketing a financial product to potential policyholders from the low-income market who have little to no education on financial services and products. Furthermore, there are significant expenses involved in (1) collecting premiums from policyholders and (2) assessing small

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[325] *Supra* (n 302, p 515).
[326] Sibindi AB and Zingwevu E "Does the regulation of the insurance industry have a pernicious effect on innovation by the sector in South Africa" (2015 Vol 4 Issue 3) *Journal of Governance and Regulation*, p 96.
[327] *Ibid.*
[328] *Ibid.*
[329] *Churchill C "Insuring the low-income market: Challenges and solutions for commercial insurers" (2007 Vol 32) The Geneva Papers in Risk and Insurance,* p 404.
[330] *Ibid.*

claims.[331] Furthermore, where a policyholder does not have a bank account to debit the insurance premium, the collection costs are even higher and more challenging. As a percentage of the premium, these costs are relatively higher for smaller policies than traditionally more comprehensive insurance policies.[332]

Regulatory barriers are a further issue with regards to the development and distribution of microinsurance. Microinsurance development is being discouraged by treating and regulating micro-insurers in the same way as traditional commercial insurers. Microinsurance has the aim to include the low-income market. This would require insurance cover at a lower monthly premium than traditional commercial insurance.[333] However, the cost of traditional regulation cannot be covered by these low premiums.[334]

Regulation increases the cost of operation.[335] These costs are borne by (1) the financial institution, having to pay the cost of running departments, levies, fees, litigation and arbitration, and (2) consumers who, for example, are required to submit identification documents and proof of income in terms of FICA.[336]

A study by the American Bankers Association showed that the cost of compliance was $10.7 billion, which was the equivalent of 59% of the industry's net income.[337] In respect to compliance, the costs incurred by an insurer are ultimately passed on to the consumer. Premiums will increase if the cost of compliance increases.[338] It is submitted that the government must ensure that regulation is cost-effective.[339]

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[331] *Ibid.*
[332] *Supra* (n 327, p 405).
[333] *Supra* (n 327, p 408).
[334] *Ibid.*
[335] *Supra* (n 236, p 97).
[336] *Ibid.*
[337] *Ibid.*
[338] *Ibid.*
[339] *Supra* (n 236, p 98).

However, the cost of compliance is difficult to quantify since the legislation covers numerous disparate aspects.[340] However, looking at the compliance costs following the FAIS Act's introduction, it suffices to say that these costs are very high.[341]

4.5 Conclusion

The nexus between innovation and financial regulation is critical.[342] The cost of compliance in the South African insurance industry is very high. As noble as these regulations might be, they are curtailing innovation and development of the financial industry.[343] This has resulted in consumers bearing the brunt and failing to benefit from improved financial products. The cost of compliance has trickled down the value chain in the form of increased premiums.[344]

If the cost of compliance and regulation does not result in value for money, it will only harm the industry as it discourages new entrants into the insurance market and the growth of existing players. It also dampens innovation.[345] Regulators need to identify where entry barriers can be lowered to promote the development of the microinsurance industry.[346]

[340] *Supra* (n 236, p 104).
[341] *Ibid.*
[342] *Supra* (n 236, p 105).
[343] *Ibid.*
[344] *Ibid.*
[345] *Supra* (n 236, p 100).
[346] *Supra* (n 327).

CHAPTER 5
CONCLUSION

Microinsurance can assist as a social development tool and positively contribute to economic growth; however, the cost of business and regulation will need to be lowered for it to be profitable and financially viable for insurers.

This dissertation sought to evaluate the possibility of microinsurance as a financial service that can assist in economic growth and the low-income earners' entry in financial markets. It also examined the regulatory burden on financial service providers and the impact thereof on profitability.

Section 27(2) of the Republic of South Africa's Constitution creates a constitutional duty on the state to take reasonable legislative and other steps to achieve the progressive realisation of everyone's right to access social security.[347] It has been ascertained in the preceding chapters that social security schemes are effective safety nets protecting low-income individuals. However, a large portion of the low-income population still falls outside of the safety net. Hence it is in essence, an imperfect solution. Microinsurance products can be responsive to the specific needs and preferences of the excluded low-income market. However, microinsurance providers are experiencing barriers in their attempt to assist.

It is suggested that more effective ways of reaching the low-income market need to be explored. As a proposition, micro-insurers could partner with the South African Social Security Agency[348] or microinsurance could be marketed to those who are already receiving social grants.[349]

In doing so, a portion of the social grants will circulate back into the mainstream economy. This will boost the insurance industry, create more jobs and develop the economy while ensuring that welfare beneficiaries start to think about private insurance and self-help. Intermediaries who market microinsurance products to SASSA beneficiaries will already know the income, basic expenses and needs of the

[347] *Supra* (n 61, Sec 27(2)).
[348] South African Social Security Agency, also referred to as SASSA.
[349] *Supra* (n 302, p 515).

potential policyholder, which will make a tailor-made product for the specific needs of that market much easier to develop.[350]

Furthermore, a partnership with the State brings the possibility of the government contributing to the premium, which will encourage the low-income market to take out microinsurance policies as they are partially subsidised.

Whilst all the recent regulatory changes are welcome, it is of utmost importance that a balance exists between costs and benefits; that there is a balance between those regulations that will assist economic growth (with an increased financial inclusion) and those that bring about a safer financial sector. The law has a significant role in bringing about financial inclusion, economic growth and fair dealings.

Microinsurance will indeed provide the low-income market with access to financial services and products, which will assist in financial inclusion. However, to see significant growth in the financial industry and to extensively promote financial inclusion, the State must assist and contribute, in some way or another, to the regulatory and business costs involved in providing these products. The Regulator needs to assess what the absolute minimum level of regulation should be and to engage with financial service providers (1) to get a better sense of understanding of their capacity and the challenges they experience when attempting to include the low-income market and (2) the problems they face in developing products for the low-income market

[350] *Supra* (n 302, p 517).

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