DEMUTUALISATION LEVY BILL: EXPLANATORY MEMORANDUM

The Bill provides for the imposition of a levy, known as the demutualisation levy, on the value of the free reserves of a mutual insurer, allocated to members entitled to the free shares pursuant to a demutualisation scheme.

Clause 1 of the Bill provides for definitions of the following words or phrases used in the Bill:

"affected company" means a company which carries on long-term insurance business in the Republic consequent upon a demutualisation scheme;

"Commissioner" means the Commissioner for the South African Revenue Service;

"demutualisation scheme" means any transaction in terms of which—

(a) the business of a mutual insurer is transferred to a company with a share capital;

(b) a mutual insurer is converted into a company with a share capital; or

(c) any combination of *(a)* and *(b)*;

Such a transaction must be confirmed by the Court in terms of section 25 of the Insurance Act, 1943;

"free reserves" means the funds accumulated by a mutual insurer which represent the excess of assets over liabilities and as, furthermore, determined in accordance with section 4;

"free shares" means shares allotted and issued in accordance with a demutualisation scheme, excluding shares issued for purposes of raising share capital;

"holding company" means a holding company as defined in the Companies Act, 1973;

"Income Tax Act" means the Income Tax Act, 1962;

"Insurance Act" means the Insurance Act, 1943;

"members" means persons—

(a) in the case of natural persons, who are ordinarily resident in the Republic;

(b) in the case of persons other than natural persons, which are effectively managed in the Republic; or

(c) in the case where the Commissioner is satisfied that it is not possible for the affected company to determine the place where they are ordinarily resident or the place of effective management of such persons, whose only or last recorded address in the records of any mutual insurer is in the Republic,

to whom shares are allotted and issued free of charge in terms of a demutualisation scheme.

"mutual insurer" means an insurer registered in terms of the Insurance Act, which is not a company with a share capital;

"Umsobomvu Fund" means the fund to be established under such terms and conditions as the Minister of Finance may determine to fund national projects for skills development and job creation.

Clause 2 provides that the Commissioner for the South African Revenue Service must administer the Act.

In terms of *clause 3*, it is proposed that a once-off levy be imposed at the rate of 2,5 per cent on the free reserves of the mutual insurer which enters into a demutualisation scheme. The levy, known as the demutualisation levy, must be paid to the Commissioner for the benefit of the Umsobomvu Fund. Only that portion of the free reserves as relates to shares allocated to members, as defined, and shares which are utilised for purposes of the payment or recovery of the levy by the affected company on behalf of the members, will be subject to the levy.

Clause 4 provides the method of determining the value of the free reserves. The free reserves are as—

* determined at a specific date;

* recorded in the demutualisation scheme confirmed by the Registrar of Insurance;
* reflected as such in the financial statements of the mutual insurer forming part of the application to the court; and
* recorded in the demutualisation scheme as approved by the court on the confirmation of the demutualisation scheme.

The value of the free reserves for the purposes of determining the levy payable will be increased at a rate of 12 per cent per annum from the specific date to the date that the liability for the levy arises.

Clause 5 provides that the liability for payment of the levy will arise when the free shares are issued to the members in accordance with the demutualisation scheme.

Clause 6 provides that the members will be liable for the levy. The levy will, however, be paid on behalf of the members by the new company, which is to carry on long-term insurance business consequent upon the demutualisation scheme. The Bill provides that the levy may be recovered by the company by retaining or utilising an appropriate number of free shares that would otherwise have been issued to members. A holding company may also for the sole purpose of the payment of the levy, issue shares, which otherwise would have been issued to members, to the affected company subject to such conditions as the Registrar of Companies may impose under the Insurance Act, 1943. Any surplus or shortfall on realisation of the shares, as compared with the levy payable, shall be for the account of the company.

Clause 7 provides that the levy must be paid by the affected company within 3 months from the date on which the liability for the levy arises. The payment must be accompanied by a return in the form as the Commissioner may require.

Clause 8 empowers the Commissioner to issue a notice of assessment in respect of any unpaid amount, if any amount of the levy has not been paid in full within the prescribed period.

Clause 9 makes provision for interest to be paid on the balance of the levy outstanding from the last date for payment, at the prescribed rate as defined in the Income Tax Act, 1962.

Clause 10 provides for the imposition of a penalty of 10 per cent of any unpaid amount. The Commissioner may, however, having regard to the circumstances of the matter, remit the penalty or a portion thereof.

In terms of *clause 11* the exercise of any discretion by the Commissioner is subject to objection and appeal.

Clause 12 provides that certain provisions contained in the Income Tax Act, 1962, will apply in respect of the levy, as if those provisions were also enacted in the Bill.

In the event of an overpayment of the levy to the Commissioner, the amount so overpaid shall be a direct charge against the Umsobomvu Fund, as is provided in *clause 13*.

Clause 14 provides the short title of the Bill.

Old Mutual and Sanlam were consulted on the Bill.

Section 77(2) of the Constitution requires that all money Bills (imposing taxes, levies or duties) must be considered in accordance with the procedure established by section 75 of the Constitution.