

FROM: Director, Worldwide Markets
LOCATION: G12
EXTENSION: 5998
DATE: 29 July 2003
REFERENCE: Y3103
SUBJECT: SOUTH AFRICA: PROMOTION OF EQUALITY
AND PREVENTION OF UNFAIR
DISCRIMINATION ACT 2000
SUBJECT AREA(S):
ATTACHMENTS: Appendix 1: Proposed Amendment to the Promotion of
Equality act
ACTION POINTS: **Managing Agents, Brokers and Underwriters to note**
DEADLINE: **Immediate**

Purpose

The purpose of this bulletin is to advise the Market that the Promotion of Equality and Prevention of Unfair Discrimination Act 2000 ("Promotion of Equality Act") recently came into force, the effective date being 16 June 2003.

Background

Market Bulletin Y2253, dated 6 March 2000, advised of the introduction of the Promotion of Equality Bill ("the Bill") and raised the issue that the Bill did not distinguish between the concepts of differentiation and discrimination. The introduction of the Bill resulted in major representations to the South African Parliament, on the basis that insurance underwriting was all about differentiation. However, it was passed, with its original provisions remaining, in February 2000 as Act No. 4 of 2000, although it would only come into force on a date to be fixed by the President by proclamation in the Gazette.

Although, representations have continued over the last couple of years, the Promotion of Equality Act, with its original provisions remaining, became effective 16 June 2003. A copy of the Promotion of Equality Act and its Regulations can be obtained using the following link www.doj.gov.za/equality%20act/eqc_frameset.htm.

The South African insurance industry has since made further representations to the Minister regarding an amendment to the Act and the Minister and the chief State law adviser have agreed an amended wording which satisfies the South African insurance industry. The proposed amended wording is detailed in Appendix 1.

Before the proposed amended wording can be submitted to Parliament so as to revise the Act, with the Minister's approval, it needs to be reviewed and accepted by the Equality Review Committee.

A further Market Bulletin will be issued once we receive confirmation that the amendment to the Promotion of Equality Act has been made. Until this time, the market should be aware of the provisions of the Promotion of Equality Act and should examine its practices to ensure that no breach of the Act is likely to occur.

If you have any queries about the above please contact any of the following:

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We have sent this bulletin to active underwriters and the compliance officers of Lloyd's brokers and managing agents and for information to market associations.

Julian James
 Director
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Proposed amendment to the Promotion of Equality Act**Determination of fairness or unfairness**

14. (1) It is not unfair discrimination to take measures designed to protect or advance persons or categories of persons disadvantaged by unfair discrimination or the members of such groups or categories of persons.
- (2) It is not unfair discrimination to differentiate between persons or groups or categories of persons if such differentiation is:
- (a) intrinsic to the type of activity or business in question;
 - (b) not arbitrary; and
 - (c) based on objective and justifiable criteria upon which it is reasonable to rely.
- (3) In determining whether the respondent has proved that the discrimination is fair on grounds other than those contained in subsections (1) and (2), the court must take into account:
- (a) the context;
 - (b) whether the discrimination impairs or is likely to impair human dignity;
 - (c) the impact or likely impact of the discrimination on the complainant;
 - (d) the position of the complainant in society and whether he or she suffers from patterns of disadvantage or belongs to a group that suffers from such patterns;
 - (e) the nature and extent of the discrimination;
 - (f) whether the discrimination is systemic in nature;
 - (g) whether the discrimination has a legitimate purpose;
 - (h) whether and to what extent the discrimination achieves its object;
 - (i) whether there are less restrictive and less disadvantageous means to achieve the purpose; and
 - (j) whether and to what extent the respondent has taken reasonable steps to accommodate diversity or to minimise or remove the disadvantage arising from discrimination on one or more of the prohibited grounds.