

Don't forget s 54(1) of the STIA



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In a few lines, section 54(1) of the Short-term Insurance Act of 1998 deals with an important point. A non-life policy is not void merely because a provision of a law has been contravened or not complied with in connection with the policy.

The basic legal principle is that, if a contract is entered into in contravention of a statute, the court will look at the intention of the legislature as to whether the contract is void. There are many statutes and statutory regulations and by-laws that could render a contract illegal. Some statutes state expressly that the contract is void unless the legal requirements are complied with. In other cases, the contract may contravene a provision of a statute which does not expressly say that the contract is void.

In the context of insurance a good example is a contract entered into in contravention of section 5 of the Insurance Act of 2017. There are various possibilities. For instance, a contract purporting to be an insurance policy may be entered into by a person who is not licensed under that Act. Or an insurer may enter into a contract which amounts to conducting business outside South Africa without the approval of the Prudential Authority under section 5(5) of the Act. The Insurance Act gives the Prudential Authority the power (some of it delegated to the Financial Sector Conduct Authority) to take steps to ensure that the person acting unlawfully ceases to conduct the business and the Authorities may take enforcement action including the imposition of penalties. The Insurance Act itself does not deal with the consequences for such a contract.

We therefore fall back on the preserved provisions in section 54(1) of the STIA.

For instance, a policyholder who enters into a policy with someone not licensed to provide the policy at all or an insurer not licensed to provide the benefits under a particular class of insurance, has a choice whether to avoid the policy and get their premiums back, or to enforce the policy in the event of there being a claim.

In its April 2023 Regulatory Actions Report the FSCA highlighted certain contraventions that are to be targeted by its enforcement division. These include fictitious policies (common in the life insurance funeral space) and performance guarantees issued for a consideration by parties who are not licensed to conduct such business.

There is no difficulty in applying the general principles to an illegal policy or a policy entered into without proper approval. Section 54(1) makes it clear that the policy is not void merely because the law has been contravened. The word “merely” is there to deal with the situation where parties enter into an unlawful policy knowing that it is unlawful and deliberately contravening the law. In those circumstances the courts are unlikely to enforce the policy. A policy innocently entered into by a policyholder however may either be avoided, and the premium restored, or the policy may be enforced for the benefit of the innocent party.

Section 54 has been in place since the commencement of the STIA in 1998 and was preceded by a similarly worded section 68 of the Insurance Act of 1943. In this respect, the fair treatment of policyholders has been recognised for at least 80 years.