



NAMIBIA FINANCIAL  
INSTITUTIONS SUPERVISORY AUTHORITY

- Safeguarding the Nation's Wealth! -

*Dispensation*

December 14, 2004

Enquiries: Ms. N. N. Kutyoowa

TO: ALL PRINCIPAL OFFICERS OF SHORT-TERM INSURANCE AGENTS, BROKERS AND RE-INSURANCE BROKERS

Circular Letter: PI/ST/3/2004

REGISTRATION OF SHORT-TERM INSURANCE AGENTS, BROKERS AND RE-INSURANCE BROKERS

In terms of section 25 (1) of the Namibia Financial Institutions Supervisory Authority Act, (Act no. 3 of 2001), all registered persons are required to pay levies to NAMFISA.

Kindly, be informed that the levies for the coming levy year (commencing April 01, 2005 to March 31, 2006) every person and company registered in terms of section 53 of the Short-term Insurance Act, (Act no. 4 of 1998) will be required to pay the following levy:

- (a) Annual levy : N\$ 1,000.00
- (b) Dispensation levy equivalent to 1% of the gross premium income leaving the country.

Annual levies must be paid in two equal installments, the first installment due on the 30 September 2005 to be paid not later than 31 October 2005 and the second installment due on 31 March 2006 to be paid not later than 30 April 2006.

Dispensation levies must be paid monthly after the payment of the premium to foreign insurers.

The levies payable in term of this notice must be paid to the Namibia Financial Institutions Supervisory Authority (NAMFISA) via a deposit into the bank account, or paid at the office. The bank particulars are as follows:

*LB/29*  
Account No: 62062664141  
First National Bank Namibia  
Windhoek Corporate Branch (Branch Code No. 281872)

Interest will be charged on amount of overdue levies at the rate equal to the prevailing prime overdraft rate of First National Bank of Namibia. The levies referred to in this notice are at VAT-exempt.

The Namibia Financial Institutions Supervisory Authority would like to take this opportunity to express our appreciation for the effort respective individuals and companies have been making to honour the prescribed levies on time.

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NAMIBIA FINANCIAL  
INSTITUTIONS SUPERVISORY AUTHORITY  
Safeguarding the Nation's Wealth! -

10 July 2006

The President  
NIBA  
Windhoek  
By Hand

Dear Mr. PC Cilliers

**FEEDBACK ON INDUSTRY MATTERS: DISPENSATION**

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Namibia Insurance Association (NIA) requested us to obtain internal legal opinion on dispensation. Since the dispensation affects the brokers and agents, the Registrar of Short-term Insurance hereby forwards the documents to Namibia Insurance Brokers Association (NIBA).

Kindly, peruse and provide us with your recommendations within 14 days from the date of this letter.

We hope that you would find the above in order. However, if you require clarity, please contact us at any time.

Yours truly,

  
Marcelina Giese  
**DEPUTY REGISTRAR: PROVIDENT INSTITUTIONS  
FOR REGISTRAR: SHORT-TERM INSURANCE**



NAMIBIA FINANCIAL  
INSTITUTIONS SUPERVISORY AUTHORITY

Safeguarding the Nation's **INTERNAL MEMO**  
**LEGAL BRIEF**

June 16, 2006

**SHORT-TERM INSURANCE**

**TO:** Marcelina !Gaoses, Gys Kirsten  
**CC:** Rainer Ritter

**FROM:** Adolf Denk

**I. DISPENSATION OF INSURANCE**

**A. INSURANCE BROKERS**

1. The first question raised in the memo is whether "brokers in terms of section 65 may solicit quotes from foreign unregistered insurers, bypassing local registered insurers and in the process allow huge premiums to leave the country?"
2. The second related question is if they can place business with foreign insurers in terms of the Act, can Namfisa compel them to first solicit quotes from local insurers, before they approach foreign insurers.
3. Both questions can be answered with reference to section 2 and 3 of the Short-term Insurance Act.

**ADVICE**

~~In case where a client is applying for dispensation through a broker or reinsurance broker:~~

1. Section 2(1) and (2) provides-

(1) No person shall, after the expiry of 90 days from the commencement of this Act, carry on short-term insurance business in Namibia unless such person is registered to carry on such business.

This makes it clear that as a rule only registered insurers or reinsurers may carry on short-term insurance business in Namibia and not foreign insurers or reinsurers. However, section 2(2) contains an exception to this rule:

(2) Notwithstanding the provisions of subsection (1), the Registrar may, if he or she is satisfied that no registered insurer or reinsurer can in any particular case provide short-term insurance cover at

*(2) Notwithstanding the provisions of subsection (1), the Registrar may, if he or she is satisfied that no registered insurer or reinsurer can in any particular case provide short-term insurance cover at equitable terms, grant exemption to any foreign insurer or foreign reinsurer to issue a policy payable in Namibia in the currency of Namibia to provide such cover.*

This empowers the Registrar to grant exemption to a foreign insurer or reinsurer to provide insurance cover and thus to issue a policy payable in Namibia in Namibian dollar. This is important as the foreign insurer may not pay the policy in South African Rand, for instance; neither can the policy be paid in South Africa.

Significantly -and this is the only instance where the Registrar can exercise his discretion- the Registrar must be satisfied that a local insurer or reinsurer is not able to offer the insurance cover sought to be underwritten by the foreign insurer at equitable terms. It can be assumed that "equitable" means what constitutes "fair value" in the discretion of the Registrar.

Furthermore, since the exemption is granted to the foreign insurer, it is only that insurer that may apply to issue a policy payable in Namibia in our currency. The foreign insurer may however, appoint a broker to apply to the Registrar on its behalf.

It seems the rationale for this section is to prevent excessive insurance charges in the domestic market.

Practically, therefore, a client may approach a broker to solicit insurance cover outside Namibia. If the same cover is offered by a foreign insurer at a cheaper rate, the foreign insurer may appoint the broker to lodge an application with the Registrar for approval to underwrite the business. The application should at the minimum contain a comparison of the terms/cover of the domestic contract with that of the foreign contract, and a comparison of the premiums payable under both. Only if the Registrar is convinced that the terms (including premium, but not solely premium) of the local contract does not constitute fair value, is he or she entitled to approve the underwriting of the contract by the foreign insurer.

*In the final analysis, brokers are entitled to solicit quotes from foreign insurers but may only place business with foreign insurers, with the prior approval of the Registrar. Should a broker contravene this rule it would be committing a criminal offence, punishable upon conviction with a fine not exceeding N\$150 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.*

2. Section 3 adds another interesting angle. It provides that-

In case where an insurer or reinsurer is applying for dispensation on behalf of a client:-

(1) No registered insurer or reinsurer shall-

- (a) in Namibia carry on insurance business other than short-term insurance business;
- (b) in Namibia issue policies other than written domestic policies;
- (c) vary a domestic policy so that it becomes payable either outside Namibia or in a currency other than the currency of Namibia, or both.

This requires that registered insurers and reinsurers may only carry on short-term insurance business, may only issue written domestic policies, and may not vary policies to become payable outside Namibia or in a currency other than the Namibian Dollar.

There is however an exception to this rule:

*Provided that, at the request of the registered insurer or reinsurer concerned, the Registrar may, if he or she is satisfied that it will not be detrimental to the interests of policyholders and will not be contrary to the public interest-*

- (i) *grant, subject to the provisions of any law, prior approval to that registered insurer or reinsurer to effect or renew reinsurance business outside Namibia subject to such conditions or limitations as may be determined by the Registrar;*
- (ii) *grant exemption for a policy to be issued in a currency other than the currency of Namibia, provided every premium payable in respect of the policy is payable in Namibia in the same currency as that in which the policy is issued.*

A registered insurer or reinsurer may apply to the Registrar for:

- prior approval to effect or renew reinsurance business outside Namibia; or
- exemption for a policy to be issued in a currency other than Namibian Dollar, in which case the policy premium must still be payable in Namibia but in the currency in which the policy was issued. (In the latter case, the Registrar could for example grant exemption that a policy for Namdeb be issued by a UK underwriter, but the premium should be payable in Namibia and in Pound or Euro, depending in which currency the policy was issued. Practically one assumes that once the Registrar granted approval the local insurer which applied would facilitate the transaction. A registered (local) broker would therefore not be involved but should the broker be contracted to facilitate the transaction envisaged in both types of transactions, this would not be illegal. However, the broker may not in its own name initiate the application to the Registrar; it has to be the insurer or reinsurer. This scenario would also be applicable to reinsurance treaties)

The Registrar's approval can only be given if he or she is satisfied that it will not be detrimental to the interests of policyholders and will not be contrary to the public interest.

The approval is subject to such conditions or limitations determined by the Registrar.

## B. REINSURANCE/CO-INSURANCE

1. In this regard the question was raised if "Namfisa could compel all insurers to place reinsurance treaties with other local insurers, before premiums can be dispensed to foreign insurers/reinsurers, as they do currently with NamibRe.
2. Fundamentally, the answer depends also on an analysis of section 2 and 3 of the Short-term Insurance Act, which has been set out above.
3. Firstly, the reference to placement of "reinsurance treaties with local insurers" is assumed to be local reinsurers as technically reinsurance treaties may only be placed with reinsurers.

4. In respect of co-insurance the approval of the Registrar is not required if local insurers spreads risk. Significantly, an insurer or reinsurer must be specifically registered to offer the co-insurance class of insurance business
5. However both reinsurance treaties placed with foreign reinsurers and co-assurance arrangements between local insurers and foreign insurers, on the one hand, or local reinsurers and foreign reinsurers, on the other must comply with the requirements of section 2 and 3.
6. In terms of section 2, as a rule only a registered reinsurer may carry on reinsurance business in Namibia and not foreign reinsurers. However, as was noted above, section 2(2) contains an exception to this rule:

The Registrar may grant exemption to a foreign reinsurer to provide insurance cover and thus to issue a policy payable in Namibia in Namibian dollar. This is important as the foreign reinsurer may not pay the policy in South African Rand, for instance; neither can the policy be paid in South Africa.

Significantly -and this is the only instance where the Registrar can exercise his discretion- the Registrar must be satisfied that a local reinsurer is not able to offer the reinsurance cover sought to be underwritten by the foreign reinsurer at equitable terms. It can be assumed that "equitable" means what constitutes "fair value" in the discretion of the Registrar.

Furthermore, since the exemption is granted to the foreign reinsurer, it is only that insurer that may apply to issue a policy payable in Namibia in our currency. The foreign insurer may however, appoint a broker to apply to the Registrar on its behalf.

Under section 2 it is the foreign reinsurer who applies -probably at the behest of a client who is not satisfied with the reinsurance rates or cover offered in the local market- to the Registrar for approval that the foreign reinsurer may accept the treaties emanating from the local market.

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It is emphasized that the application should at the minimum contain a comparison of the terms/cover of the domestic contract with that of the foreign contract, and a comparison of the premiums payable under both. Only if the Registrar is convinced that the terms (including premium, but not solely premium) of the local contract do not constitute fair value, is he or she entitled to approve the acceptance of the reinsurance treaty by the foreign reinsurer.

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7. In terms of section 3 registered reinsurers may only carry on reinsurance business, may only issue written domestic policies, and may not vary policies to become payable outside Namibia or in a currency other than the Namibian Dollar.

As was noted earlier, the exception to this rule is that a registered insurer or reinsurer may apply to the Registrar for-

- approval to effect or renew reinsurance business outside Namibia; or
- exemption for a policy to be issued in a currency other than Namibian Dollar, in which case the policy premium must still be payable in Namibia but in the currency in which the policy was issued.

Under the first scenario, the local insurer or reinsurer may apply for approval that reinsurance may be effected outside Namibia. The Registrar may only grant the approval if it is in the interests of policyholders generally, and not contrary to the public interest, and may impose conditions or limitations.

Under the second scenario the insurer or reinsurer can apply for exemption that the reinsurance treaty be issued in a foreign currency, although the premium must still be payable in Namibia.

8. With regard to the question asked in the brief, if "Namfisa could compel all insurers to place reinsurance treaties with other local insurers, before premiums can be dispensed to foreign insurers/reinsurers, as they do currently with NamibRe, the answer is multifaceted:

(a) NamibRe is the only local reinsurer. As a rule only NamibRe may carry on reinsurance business in Namibia and not foreign reinsurers. However, if its premiums and the other terms of the contract are uncompetitive, a foreign reinsurer may apply to take on reinsurance treaties, but the policy must be payable in Namibia in Namibian dollar.

(b) NamibRe may also enter into co-insurance arrangements with a foreign reinsurer, but must apply for approval in terms of section 3. NamibRe or another local insurer may also apply that a foreign reinsurer effect or renew a reinsurance policy outside Namibia or that a policy be issued in a foreign currency.

(c) Therefore Namfisa can compel all local insurers to place reinsurance treaties with NamibRe. Nonetheless, such compulsion would only be legal to the extent that the Registrar has not granted approvals in terms of section 2 or 3. The Registrar thereafter would not be able to compel the local insurers with approvals to place treaties with NamibRe.

(d) It must be noted that such approvals are based on each particular case and is not in force indefinitely. For instance under section 2, the approval is based on a comparison of each particular contract. In terms of section 3, the approval is only valid until the treaty comes to an end. At renewal, the Registrar has to be approached afresh for approval to renew.

(e) It is recommended that an audit of the industry be done to determine the manner in which section 2 and 3 are contravened, if at all.

(f) It is submitted that it is not in the public interest, at this juncture of the development of our local industry that local insurers be allowed to directly place reinsurance treaties with foreign reinsurers, unless a compelling case is made out for such placement. Any applications for approval by the Registrar in terms of section 2 and 3 should be viewed with caution.

(g) However, the Registrar should appraise himself fully with the systemic risks reinsurance arrangements hold for our market. For instance, if the legal requirements of section 2 and 3 be enforced with immediate effect, significant market risks could accrue. It is for this reason that it is proposed that the industry audit proposed above should fully set out the current portfolio of NamibRe, as well as the extent of reinsurance and co-insurance business underwritten by foreign insurers or reinsurers. In this way a full picture would emerge of the interests of the policyholders and the public interest.

## II. NAMIBIANIZATION

1. The question is raised if reinsurance treaties should be based on local capital limits and not Group limits.
2. It is my understanding based on consultation with the department is that South African subsidiaries taking on reinsurance negotiate their premiums via the considerable base of their parent company in South Africa. Essentially, these companies are afforded reinsurance cover through transnational inter-company arrangements.
3. At this juncture it is not clear how the arrangements are structured, but it seems at least like a co-insurance arrangement with the South African holding company. If that is the case, sections 2 and/or 3 approvals are required. Similarly, if the South African subsidiaries are placing reinsurance treaties with foreign reinsurers, section 2 and 3 approvals are required.
4. It is recommended that the industry audit proposed above should also include an analysis of the manner in which registered insurers that are South African subsidiaries spread their risk off-shore in order that a holistic picture is formed of the practices employed in this regard.

— END —

NAMFISA - LEGAL BRIEF - DISPENSATION

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