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Enquiries: GMT Kirsten

Circular Letter: PI/STI/2/2008

TO: ALL REGISTERED SHORT-TERM INSURANCE COMPANIES

RE: OPERATIONS OF INSURANCE BROKERS AND AGENTS

Introduction

During the statutory inspections of brokers in the industry it was revealed that the interpretation of the Act appears to be unclear because it was not communicated with the industry via circulars. Several meetings were held to hear the views from the industry and to determine where the gray areas and misunderstandings are.

The Short Term Insurance Act was written with the aim of providing the short term industry with a framework on structure and operations. After various inspections and debates it was found that the industry, although the Act is operational since 1998, did not align with this set framework but rather wanted the Act to align with how the business operates.

Purpose of the Circular

This circular explains the framework of operations, as provided by the Short Term Insurance Act No 4 of 1998, for intermediaries and emphasises the risk management responsibility of the insurer as set out by the current Act.

This circular therefore is to inform the industry about this framework which must be complied with and also setting a timeframe during which the industry must adapt.

Definition

The definitions of short term agents and brokers provide the framework within which a broker or agent must operate.

Agent

"insurance agent" means a person who on behalf of one or more insurers-

- (a) solicits short-term insurance business; or
 - (b) performs any act relating to the receiving of proposal forms for such business or the issue of policies or the collection of premiums in respect of such business,
- but does not include an employee of an insurer unless the remuneration of that employee comprises commission;

By virtue of the law the agent represents the insurance company on whose behalf the agent solicits short-term insurance business and does not represent the insured.

Any person who does the work of an agent and gets commission must be registered with NAMFISA.

The functions of an agent are to solicit short-term insurance business, *receive proposal forms for the insurer, issue policies or collect premiums* on behalf of the insurer. This function is usually defined by an agreement between the insurer and the agent where the agreement will determine each party's contractual obligation. The definition allows for "*any act relating to...*" defined services, which therefore can consist out of an underwriting mandate, sales mandate, administration mandate or all three together. The ultimate responsibility, according to Regulation 5, however still lies with the insurer or re-insurer and the Registrar will keep the insurer responsible for any non compliance or contravention of the agent. The definition however does not include a claims management mandate as per which limits mandates only to obtainment of business.

Broker

"**insurance broker**" means a person who on behalf of any other person negotiates short-term insurance business other than reinsurance business with one or more insurers, but does not include an insurance agent or an employee of an insurer unless the remuneration of that employee comprises commission;

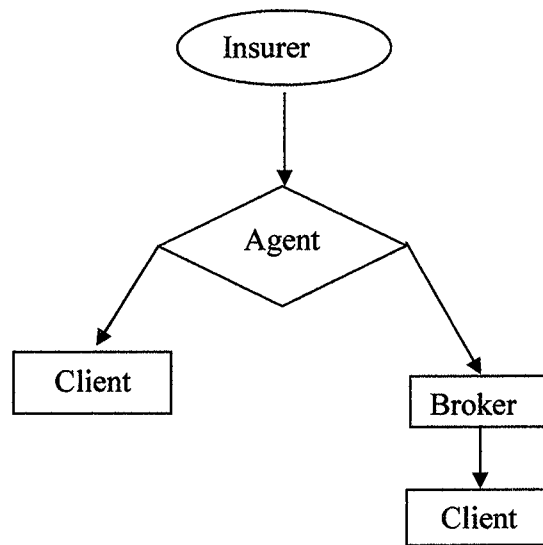
The definition of a broker clearly provides that an insurance agent cannot be a broker. Since a broker cannot be insurance agent it follows then that a broker cannot perform the functions that an insurance agent is empowered to perform.

There is no empowerment for a broker to "**collect**" premiums on behalf of the insurer or perform any act relating to the receiving of proposal forms on behalf of the insurer or to issue policies on behalf of an insurer. That is to say a broker is not empowered to gather premiums or systematically seek and acquire premiums or call for and take away premiums or to fetch premiums or to call for and receive premiums as a right or due. At most the broker may receive premiums from the insured and pay same over to the insurer. (Regulation 3)

An agent therefore cannot be employed by a brokerage firm. In other words where the firm is the registered broker it cannot employ agents due to the conflict of interest that will arise. i.e. the roles and responsibilities of the broker and the agent are diametrically opposed in the agency role they respectively perform.

From these definitions it is also clear that salaried employees cannot be registered as either agents or brokers.

An agent represents the insurer to negotiate insurance business on behalf of the broker's client and performs acts relating to the receiving of proposal forms for such business or the issue of policies or the "**collection**" of premiums in respect of such business. This means that the agent can build relationships with clients directly or with brokers directly as the diagram below portrays.



A broker on the other hand is empowered to negotiate short-term insurance business other than reinsurance business with one or more insurers, on behalf of any other person and to “**receive**” premiums payable under a policy, where such premiums are offered to them.

Remuneration of Intermediaries

The issue of remuneration of brokers and agents is set out in Regulation 6, which provides as follows:

Limitation of remuneration

6. (1) No consideration shall in respect of short-term insurance business, **directly or indirectly**, be paid, allowed or given to, or accepted by or on behalf of, an insurance agent or an insurance broker or a reinsurance broker or a Lloyd’s intermediary or any other person as remuneration for rendering services as an intermediary towards effecting, maintaining or servicing any short-term insurance policy otherwise than by way of commission in monetary form.

(2) The commission payable in respect of a short-term insurance policy shall, regardless of the number of intermediaries involved, in total not exceed the maximum rate of commission payable in terms of subregulation (4).

(3) No commission shall be paid, allowed, given or accepted in respect of a short-term insurance policy before the date on which the premium in respect of which it is payable is paid to the registered insurer or reinsurer or to the underwriter at Lloyd’s concerned.

(4) No commission shall exceed-

(a) in respect of a vehicle policy, 12,5 per cent;

(b) in respect of any short-term insurance policy other than a vehicle policy, 20 per cent,

of the premium payable under any such policy: Provided that commission payable to an insurance agent shall not exceed-

- (i) in respect of a policy referred to in paragraph (a), 10 per cent;*
- (ii) in respect of a policy referred to in paragraph (b), 15 per cent,*

of the premium payable under any such policy.

- (5) If a premium or any part thereof is for any reason refunded by a registered insurer or reinsurer or by an underwriter at Lloyd's, the commission paid, allowed or given in respect of that premium or part of that premium, if any, shall be refunded to the registered insurer or reinsurer or to the underwriter at Lloyd's by the person to whom it was paid, allowed or given.*

For compliance purposes the Registrar therefore requires all intermediaries to comply with the set regulations as follows:

Regulation 6 (1) provides the parameters for remuneration in the industry for intermediary services. These services are described and include the following:

- *effecting, maintaining or servicing any short-term insurance policy*

For compliance purposes the Registrar cannot allow any other type of remuneration or consideration to be paid for any of these short term insurance business services rendered, in any form or manner apart from commission. This means that services as defined might be rendered under different scenarios or definitions but can only be remunerated for in the form of commission.

Regulation 6(4) provides that the remuneration of an agent, which shall not be more than 10% or 15%, respectively, for services rendered. The definition of an agent provides the framework of operations and therefore the agent can be remunerated for "*effecting, maintaining or servicing a policy*" but no additional remuneration. A registered agent cannot under the definition of an agent do any other business, which falls outside the scope of the definition or get remunerated for it. The definition of a broker provides that a broker can only "*negotiates business on behalf of*" and therefore the broker can be remunerated for "*effecting,..... a policy*" but no additional remuneration. A registered agent cannot under the definition of an agent do any other business, which falls outside the scope of the definition or get remunerated for it.

Regulation 6 (4) also provides that the total remuneration for a short-term insurance policy shall not be more than 12,5% or 20%, respectively, of the premium paid. This means the remuneration for both a broker and an agent involved in the same transaction may not exceed the limits as set out above. The definition of a broker provides the framework of operations and therefore the broker can only be remunerated as a broker and not for additional operations.

The regulations then specifically set maximum commission rates per policy as described in the paragraph above. The definition of brokers and agents therefore prohibits these entities to operate with different mandates apart from those defined by the act. Agents and brokers therefore cannot, in their capacities as either an agent or a broker, be involved in selling of cars, professional services, beyond those of an agent or broker, or products other than those specified in the definition. Regulation 6 does not only limit the payment

of consideration by only the insurer, but refers to the total remuneration or consideration in respect of short-term insurance business regardless of the number of intermediaries.

Risk Management

The risk assessment obligation of insurance business lies with the insurer and for regulatory purposes the insurer is ultimately responsible for risk mitigation. Regulation 5 addresses the issue of risk assessment by way of risk analysis and places the responsibility for risk assessment on the insurer or reinsurer by requiring insurers and re-insurers, not brokers, to make use of actuarial services to justify the differentiation between policies.

Prohibition of differentiation, inducements and assumption of obligations

- Regulation 5. (1) No registered insurer or reinsurer shall make or permit any differentiation as between one policy and another in regard to their terms and conditions unless and then only to the extent that the registered insurer or reinsurer has satisfied itself that such differentiation is justified on actuarial grounds: Provided that if the registered insurer or reinsurer has appointed a valuator, that valuator shall so satisfy himself or herself.*
- (2) No person shall, directly or indirectly, pay, allow or give, or offer to pay, allow or give to any other person any valuable consideration as an inducement to that other person to take out a domestic policy, and no person shall knowingly receive or offer to receive as such an inducement any such valuable consideration.*
- (3) No registered insurer or reinsurer shall assume an obligation under a domestic policy unless and until it has received at least one-twelfth of the first year's premium in respect thereof or has satisfied itself that such part of such premium will be paid by stop order, debit order, credit card, or other instruments approved by the Registrar, not later than 30 days after the assumption by it of such obligation*

Regulation 5(3) requires that payments must either be completed or in process of payment via predefined instruments, like stop orders, credit cards or debit orders and other instruments that are approved by the Registrar.

The responsibility of managing the insurance risk profiles lies with the insurer and re-insurer, they are responsible for ensuring that all risk profiles are captured and held under their jurisdiction and ensure that the policy documents are originated from the insurer and updated according to those risks. The Short Term Insurance Act prescribes that only a person registered as an insurer may carry on the business of an insurer as defined in section 2 (3).

Section 2 Unregistered person may not carry on insurance business

- (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.*
- (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.*

(3) For the purposes of subsection (1), a person shall, in the absence of evidence to the contrary, be deemed to carry on short-term insurance business in Namibia, if such person performs in Namibia-

- (a) any act the object or result of which is that another person enters into or varies a policy in terms of which such first-mentioned person undertakes to provide policy benefits; or
- (b) in relation to a policy in terms of which such first-mentioned person has undertaken to provide policy benefits, any act directed towards-
 - (i) maintaining, servicing, surrendering, or otherwise dealing with, or providing a loan in respect of, or on the security of, such policy; or
 - (ii) collecting or accounting for premiums payable under such policy; or
 - (iii) receiving, submitting, settling, assisting or otherwise dealing with, a claim under such policy.

In the cases of brokers or agents who receive premiums from a person insured or to be insured Regulation 3 (1) sets out the guidelines and the process to be complied with by such agent or broker. Regulation 3 does not provide permission for collection of premiums by brokers, but defines receiving of premiums for such cases when it is practically not possible to collect those premiums through defined instruments. No broker may therefore collect any premiums by way of instruments that allow the insurer to do the collection.

Administration

The short term insurance act is silent on the definition of an administrator under a third party agreement and the definition of an "intermediary" does not portray whether it includes or excludes an administrator. The act however allows the agent to perform *"any act relating to the receiving of proposal forms for such business or the issue of policies or the collection of premiums in respect of such business"*. The insurer or reinsurer can therefore outsource these functions to the agent where they can receive proposals and deal with them, they can deal with any act relating to the issuing of policies and they can do any act relating to the collection of premiums but they cannot handle claims.

Regulation 6 limits remuneration to the functions of *"effecting, maintaining or servicing a policy"* by agents and brokers and *"any other person"*. The *"any other person"* does not exclude administrators but requires that an administrator is registered as an agent. Insurers therefore must ensure to comply with the limits on remunerations as described by the Act despite the representation.

Compliance

The Insurers are therefore obliged to comply with the following:

1. Ensure that all risk profiles are accounted for under the insurers risk profile.
2. Ensure that risk management in assuming a risk profile includes the analysis of the risk profiles, the making of underwriting decisions and claims risk analysis.
3. Collect all premiums either through an agent or directly from the insured and allow brokers to receive premiums only when such premium can not be collected through the approved instruments.
4. All risk mandates are the responsibility of the insurer even in the event where risk management is outsourced to an agent.
5. Ensure that relationships are only with agents and brokers that comply with the provisions of the Short Term Insurance Act, and should that not be the case such agreements must be terminated and the incidents reported to the Registrar.

6. Remunerate brokers and agents strictly according to regulation 6 and based on the definitions as provided by the Act and the guidelines provided in this document.
7. Ensure that total remuneration per policy is not more than the set standards for all intermediary services.

Brokers are therefore obliged to comply with the following:

1. Not to accept any mandate offered by insurers which is outside the mandate as determined by the Act.
2. Ensure that their operations comply with the definition of a broker i.e. that they represent the consumers.
3. Ensure that the policy contract and schedule are those of the insurer and are issued by the insurer.
4. Not collect any premiums via any of the identified instruments but only receive as and when such premiums are submitted to them.
5. Ensure correct procedure and timeous payments of premiums to the insurer when premiums are received as determined by Regulation 3.
6. Not accept any remuneration that does not comply with regulation 6 and which falls outside the scope of the business of a broker.
7. All business outside the scope of a broker definition must be stopped and transferred to the insurer.

Agents are therefore obliged to comply with the following:

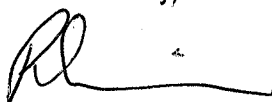
1. Do not accept any mandate offered by insurers which is outside the mandate of an agent as determined by the Act..
2. Comply with the definition of an agent and represent insurers.
3. Ensure that the policy contract and schedule is that of the insurer and is issued by the insurer.
4. Ensure correct procedure and timeous payments when premiums are collected as determined by Regulation 3.
5. Not accept any remuneration that does not comply with regulation 6 and which falls outside the scope of the business of an agent.

General Offence and Penalties

The current act is still in force and applicable as the governing law and participators in this market under the Short Term Insurance Act must comply with it.

In terms of regulation 9 any insurance agent or insurance broker who contravenes or fails to comply with the provisions of regulations 3(1), 3(2) or 6 will be guilty of an offence and on conviction be liable to a fine not exceeding N\$15 000.00 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

Yours sincerely,



Rainer Ritter

REGISTRAR SHORT-TERM INSURANCE COMPANIES