

TO : REGISTERED INSURERS AND REINSURERS, INSURANCE AND REINSURANCE BROKERS AND AGENTS, MEDICAL AID FUNDS, PENSION FUND ORGANIZATIONS, FRIENDLY SOCIETIES, COLLECTIVE INVESTMENT SCHEMES, LINKED INVESTMENT SERVICE PROVIDERS, STOCK-BROKERS, NAMIBIAN STOCK EXCHANGE AND MICROLENDERS

DIRECTIVE : MCD/1/2023

EFFECTIVE DATE : 10 JULY 2023

SUBJECT : CONFLICT OF INTEREST

1. Introduction

- 1.1. This Directive is issued by virtue of the functions and powers of the Namibia Financial Institutions Supervisory Authority (NAMFISA) and those of its Chief Executive Officer, in his capacity as the Registrar of various financial institutions in terms of various applicable legislation, read with the Namibia Financial Institutions Supervisory Authority Act 3 of 2001 (NAMFISA Act).
- 1.2. The objective of this Directive is to prohibit undue behavior and to provide guidance to the providers of financial services in identifying, evaluating, and managing conflicts of interest created by the practice regarding the entertainment and other benefits offered by or received from financial services providers or their representatives.
- 1.3. The Directive on Conflict of Interest issued on 8 December 2014 is hereby revoked and replaced with this Directive.

2. Background

- 2.1. NAMFISA noted, with concern, the practice of financial services providers or their representatives offering or receiving remuneration in the form of gifts, hospitality or entertainment to or from third parties.
- 2.2. A financial services provider must at all times render financial services honestly and fairly, with due care, skill and diligence and in the interest of clients or customers and the integrity of the financial services industry.
- 2.3. Remuneration or incentives offered and/or other indirect consideration payable by another service provider, a product supplier or any other person could be viewed as creating a potential conflict of interest.

3. Applicability

- 3.1. This Directive is applicable to any institution and those acting on behalf of such institution in relation to the provision of financial or ancillary services to clients or customers within the regulatory ambit of NAMFISA, including but not limited to:

Advisors;
Insurers;
Insurance Agents;
Insurance and Re-insurance Brokers;
Collective Investment Schemes;
Custodians;
Dealers;
Friendly Societies;
Fund Administrators;
Investment Managers;
Medical Aid Funds;
Pension Funds;
Stock-Brokers;

Trustees;
Microlenders; and
Representatives of all of the above and any other persons registered or licensed by NAMFISA.

3.2. In addition, this Directive applies to unregulated third parties that are contracted by financial services providers for the ultimate benefit of the entities listed above.

4. The Law

4.1. In terms of section 3(a) of the NAMFISA Act, one of the functions of NAMFISA is "to exercise supervision, in terms of the NAMFISA Act or any other law, over the business of financial institutions and over financial services."

4.2. Section 4(2)(h) of the NAMFISA Act further provides that NAMFISA "may do anything which is necessary or expedient to perform its functions."

5. Definitions

5.1. "Conflict of Interest" means any situation in which a financial service provider or a representative of a financial service provider has an actual or potential interest that may, in rendering a financial service to a client or customer–

- a) Influence the objective performance of his/her or its obligations to that client or customer; or
- b) Prevent a financial services provider or representative of a financial service provider from rendering an unbiased and fair financial service to that client or customer, or from acting in the best interest of that client or customer, including but not limited to:
 - i) A financial interest;
 - ii) An ownership interest; and
 - iii) Any relationship with a third party.

5.2. "Distribution channel" means -

- a) any arrangement between a product supplier or any of its associates and one or more providers or any of its/their associates in terms of which arrangement any support or service is provided to the provider or providers in rendering a financial service to a client or customer;
- b) any arrangement between two or more providers or any of their associates, which arrangement facilitates, supports or enhances a relationship between the provider or providers and a product supplier;
- c) any arrangement between two or more product suppliers or any of their associates, which arrangement facilitates, supports or enhances a relationship between a provider or providers and a product supplier;

5.3. "Financial Interest" means any cash, cash equivalent, voucher, gift, service, advantage, benefit, discount, domestic or foreign travel, hospitality, accommodation, sponsorship, other incentives or valuable consideration, other than -

- a) An ownership interest; or
- b) Training that is not exclusively available to a select group of providers or representatives.

5.4. "Immaterial Financial Interest" means any financial Interest with a determinable monetary value, the aggregate of which does not exceed N\$1000.00 in any calendar year from the same third party in that calendar year received by -

- a) A financial service provider who is a sole proprietor;
- b) A representative for that representative's direct benefit; or
- c) A financial services provider, who for its benefit or that of some or all of its representatives, aggregates the immaterial financial interest paid to its representatives.

5.5. "Ownership Interest" means -

- a) Any equity or proprietary interest, for which fair value was paid by the owner at the time of acquisition, other than equity or a proprietary interest held as an approved nominee on behalf of another person; and
- b) Includes any dividend, profit share or similar benefit derived from that equity or ownership interest.

5.6. "Provider" means a registered or licensed financial services provider, and includes a representative;

5.7. "Sole proprietor" means – a financial services provider who is a natural person.

5.8. "Third party" means -

- a) A product supplier;
- b) Another provider;
- c) An associate of a product supplier or provider;
- d) A distribution channel; and
- e) Any person, who in terms of an agreement or arrangement with a person referred in paragraphs (a) to (d) above, provides a financial interest to a financial services provider or its representative.

6. General

6.1. A financial services provider must at all times render financial services honestly, fairly, with due skill, care and diligence, and in the interest of clients or customers and the integrity of the financial services industry.

6.2. A financial services provider shall take reasonable steps to identify circumstances that could pose a conflict of interest and must manage conflicts of interest fairly,

both between itself and its clients or customers and between one client or customer and another client or customer.

- 6.3. The financial services provider must take all reasonable steps to identify the types of conflicts of interest that arise or may arise, in the course of carrying out financial or ancillary services between the provider and a client or customer or one client or customer and another client or customer. Once a financial services provider has identified an actual or potential conflict of interest, it must maintain and operate effective organizational arrangements with a view to taking all reasonable steps to prevent conflicts of interest from constituting or giving rise to a material risk of damage to the interests of its clients or customers.

7. Directive

- 7.1. A financial services provider may not offer any financial interest to its representative, nor may its representative solicit or receive any financial interest -
- a) that is determined with reference to the quantity of business secured for the provider without also giving due regard to the delivery of fair outcomes for clients; or
 - b) for giving preference to a specific product supplier, where a representative may recommend more than one product supplier to a client; or
 - c) for giving preference to a specific product of a product supplier, where a representative may recommend more than one product of that product supplier.
- 7.2. The financial services provider may not avoid, limit or circumvent or attempt to circumvent compliance with this Directive through an associate or an arrangement involving an associate.
- 7.3. Financial services providers or representatives of financial services providers may only receive, solicit or offer remuneration or benefits in the form of:
- a) Commission as provided for in the relevant legislation;

- b) Fees for rendering financial services as agreed per contract in writing with the client or customer; and
- c) Fees for rendering of services to a third party which are reasonably commensurate with the services rendered.

7.4. An immaterial financial interest shall only be received, solicited or offered to/by a financial services provider or his/her representative where such interest will be considered trivial and inconsequential by a reasonable and informed third party, weighing all the specific facts and circumstances and if it was offered in the normal course of business without the specific intent to influence decision making.

7.5. Where immaterial financial interests were offered or received, the financial services provider shall maintain a log of all financial interests on a yearly basis so that cumulative financial interest does not exceed N\$1000.00.

7.6. The financial services provider must disclose to the client or customer the existence of any conflict of interest in the relevant services, or of any circumstance which gives rise to an actual or potential conflict of interest in relation to such services and take all reasonable steps to ensure fair treatment of the client or customer.

7.7. A financial services provider must develop a conflict of interest management policy that contains at minimum the following:

- a) Identification of circumstances that will likely lead to a risk of conflict of interest;
- b) Implementation of controls to reduce or eliminate such risk;
- c) Reporting procedures in the event of a conflict of interest arising;
- d) Timely disclosure in writing to the clients or customers and to NAMFISA of any interest or activities that may represent a conflict of interest and obtaining their consent to act in such circumstances; and
- e) Training of staff on how to identify and manage Conflict of Interest.

For further information or clarification with regard to the above, please do not hesitate to contact Ms. Gloria Situmbeko at telephone number (061) 290 5294 or via e-mail at gsitumbeko@namfisa.com.na.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'K. Matomola', with a stylized flourish at the end.

Kenneth S. Matomola
CHIEF EXECUTIVE OFFICER