

9 July 2014

To: Principal Officers - All registered insurers and reinsurers
All insurance agents and brokers and reinsurance brokers
Chairperson - LAAN
Chairperson - NIBA
Chairperson - AIM
Chairperson - NIA

DIRECTIVE LETTER: I/STI & LTI/07/2014

Effective date: 9 July 2014

SUBJECT: ENTERTAINMENT OF INSURANCE AND REINSURANCE BROKERS

The insurance industry is hereby informed of clarification in the initial Directive Letter **I/STI & LTI/05/2014**, its consequent withdrawal and replacement with this Directive Letter. The principle of the initial directive is embodied in this new Directive Letter.

1. Introduction

1.1 This Directive Letter is issued by virtue of NAMFISA's functions and powers, and those of its CEO in his capacity as the Registrar of Long-term and Short-term Insurance, in terms of the Namibia Financial Institutions Supervisory Authority Act No. 3 of 2001, and is applicable to all registered insurers, reinsurers and insurance and reinsurance brokers under the Long-term Insurance Act No. 5 of 1998 ("LTI Act") and the Short-term Insurance Act No. 4 of 1998 ("STI Act").

1.2 The purpose of this Directive Letter is to eliminate conflicts of interest, to ensure that the impartiality of insurance and reinsurance brokers is not impaired in any



form or manner, to give guidance and to correct the current practice in the insurance industry regarding entertainment and other benefits given to insurance and reinsurance brokers on top of, and in addition to, the commission in monetary form they are legally entitled to. For clarity, this Directive Letter does not apply to and in respect of registered insurance agents.

2. The current insurance practice

- 2.1 The Registrar has observed a practice in the insurance industry whereby registered insurers are incentivising some insurance and reinsurance brokers in addition to paying normal commission for business procured. These incentives take many forms, e.g. overseas trips, expensive gifts, hunting trips, etc.

This practice creates a conflict of interests between insurance and reinsurance brokers on the one hand and the persons whom they represent when negotiating insurance business with registered insurers on the other hand, as it potentially puts the best interests of the insurance or reinsurance broker at odds with the best interests of his/her/its clients.

- 2.2 The aforementioned practice will no longer be tolerated and allowed to continue.
- 2.3 The Registrar does not consider benefits, consideration and payments of N\$500.00 or less, in total, per annum, to an insurance and reinsurance broker, to create a conflict of interests as envisaged in paragraph 2.2 above and this Directive Letter does not apply thereto.

3. The law

- 3.1 Section 1 of the LTI and STI Acts contains the following definitions:



Insurance broker- means a person who on behalf of any other person negotiates long-term and/or 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 remuneration of that employee comprises commission.

Reinsurance broker- means a person who on behalf of an insurer negotiates long-term and/or short-term reinsurance business with one or more reinsurers.

Insurance agent- means a person who on behalf of one or more insurers:-

- i) Solicits long-term and/or short-term insurance business or
- ii) 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.

From the above definitions it is a clear deduction that an **insurance or reinsurance broker represents his client(s)** with insurers, whilst an **insurance agent represents insurer(s)** with a client. Any action that thus puts an insurance or reinsurance broker's personal interests in conflict with that of the client(s) whom he/she/it is representing is accordingly outside the legally allowed mandate within which insurance and reinsurance brokers may operate. Likewise, since an insurance agent represents an insurance company(ies), there can be no such conflict of interests between an insurance agent and the client(s) with whom he represents his/her/its affiliated insurer(s) interests.

- 3.2 Section 3(a) of the NAMFISA Act states that one of the functions of NAMFISA is "to exercise supervision, in terms of this Act or any other law, over the business of financial institutions and over financial services." Insurance and reinsurance brokers are included in the definition of financial institutions in the NAMFISA Act.



- 3.2 Section 4(2)(h) of the NAMFISA Act further states that NAMFISA “may do anything which is necessary or expedient to perform its functions.”

4. Conclusion

- 4.1 NAMFISA and the Registrar of Long-term and Short-term Insurance are legally mandated to supervise, i.e. observe and direct the business of insurance and reinsurance brokers.
- 4.2 It is clear that the legal mandate imposed on insurance and reinsurance brokers would be violated if any action is allowed that places the insurance broker or reinsurance broker's personal interests in conflict with that of the persons he/she/it is representing.
- 4.3 In order for NAMFISA and the Registrar of Long-term and Short-term Insurance to effectively perform their functions; all benefits, consideration and payments of more than N\$500.00 in total per annum received by insurance and reinsurance brokers from registered insurers are considered as creating an intolerable conflict of interests and is hereby forbidden.

5. Directive

- 5.1 All registered insurance and reinsurance brokers must be remunerated by means of commission in monetary form only.
- 5.1 Insurers must cease incentivising insurance and reinsurance brokers by any other means over and above the legal commission in monetary form (except for the N\$ 500.00 per annum per broker limit as described in 4.3 above), for services rendered as insurance and reinsurance brokers, subject to this Directive Letter.



5.2 The Registrar shall take the necessary action to give effect to section 69 of the LTI Act and section 68 of the STI Act against any person found to be incentivising insurance and reinsurance brokers above the legally set limits, due regard having first been had to paragraph 4.3 hereof.

The Registrar therefore requires full cooperation and support in this process by all industry players and stakeholders at large. Should you still need more clarity, please do not hesitate to contact either the Long-term Insurance manager or the Short-term Insurance manager.



Phillip N. Shiimi

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