

4 March 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: I/STI & LTI/02/2014

Effective date: 1 September 2014

SUBJECT: REMUNERATION OF AGENTS AND BROKERS

1. Introduction

- 1.1. This directive 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, insurance agents and brokers 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 is to direct all persons carrying on insurance business as brokers or agents in Namibia to comply with the manner of remuneration as set out under Regulation 13 of the LTI Act and Regulation 6 of the STI Act.



2. The current insurance practice

- 2.1 Insurers, brokerage firms, including close corporations, and agencies have ceased registering new agents and brokers who are carrying on the business of an insurance agent or broker or reinsurance broker on the basis that they are not remunerated by means of commission.
- 2.2 The Registrar has in the past incorrectly cancelled the registration of agents and brokers or allowed some unregistered agents and brokers to act as such on the basis that they are remunerated by means of salaries and not commission, yet these parties continued to act as agents and brokers as defined in the Acts.
- 2.3 These practices will no longer be tolerated and allowed to continue as they are contrary to the Acts.

3. The law

- 3.1 The following definitions are contained in section 1 of the LTI and STI Acts:

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.

3.2 From the above definitions it is therefore clear that:

- i) An agent acts on behalf of one or more insurers whilst a broker negotiates on behalf of any person with insurers or reinsurers;
- ii) An agent solicits insurance business or performs any act relating to the receiving of proposal forms, the issuing of policies or the collecting of premiums whilst a broker only negotiates insurance business;
- iii) Whether a person is remunerated by means of a salary or commission is not a factor when determining whether such a person is a broker or agent as defined in the Acts, except when the person is employed as an agent by an insurer; and
- iv) Brokers and agents, excluding an agent who is an employee of an insurer, must be remunerated by means of commission.

3.3 Regulation 13(1) to the LTI Act states that: "No consideration shall in respect of long-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 reinsurance broker or any other person as remuneration for rendering services as an intermediary towards effecting, maintaining or servicing any long-term policy otherwise than by way of commission in monetary form".

3.4 Regulation 6(1) to the STI Act states that: "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".

4. Conclusion

- 4.1 In terms of section 55(1) of the LTI Act and section 53(1) of the STI Act, insurance agents and brokers and reinsurance brokers are required to be registered as such in order to carry on insurance business.
- 4.2 The insurance agents and brokers as defined in the Acts must be remunerated by means of commission in monetary form only, for rendering insurance intermediary services on behalf of registered insurers, members of the public, brokerage firms, including close corporations, or agencies.

5. The directive

- 5.1 All persons, juristic and natural, carrying on the business of insurance agents or brokers or reinsurance brokers in Namibia must be registered as such.
- 5.2 All registered agents and brokers must be remunerated by means of commission in terms of the Acts and Regulation 13 to the LTI Act and Regulation 6 to the STI Act by **30 August 2014** and with effect from the Effective Date stated above all agents and brokers, whether registered before, on or after the Effective Date, must be so remunerated.
- 5.3 Any person carrying on the business of an insurance agent or broker or a reinsurance broker as defined in the LTI and STI Acts, whether such person is paid a salary or commission, without being registered as such, is contravening



section 55 of the LTI Act and/or section 53 of the STI Act, which contraventions constitute criminal offences, and such person shall on conviction be liable in terms of section 69(a)(i) of the LTI Act and/or section 68(a)(i) of the STI Act.

- 5.4 Any person who pays, allows, gives or accepts consideration other than commission in monetary form as remuneration of an insurance agent or broker or a reinsurance broker as defined in the LTI and STI Acts for rendering services as an intermediary towards effecting, maintaining or servicing any short-term and/or long-term insurance policy is contravening Regulation 13 to the LTI Act and/or Regulation 6 to the STI Act, which contraventions constitute criminal offences, and such person shall on conviction be liable in terms of Regulation 16(a)(i) to the LTI Act and/or Regulation 9(a)(i) to the STI Act.

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

CEO of NAMFISA and Registrar of Long-term and Short-term Insurance