

Enquiries: Ms. Grace Kandetu

28 March 2017

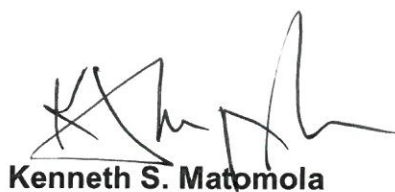
To: Principal Officers- All registered insurers

**SUBJECT: COMMENTS ON DRAFT DIRECTIVE - REGISTRATION OF AGENTS OPERATING
FROM FOREIGN BASED CALL CENTERS**

1. The above matter refers.
2. Attached hereto kindly find a list of comments received to the draft directive and the Registrar's replies thereto. Also attached is the finalized Directive which will come into effect on 1 June 2017.
3. Should further clarity be required in respect of the comments submitted to the Registrar and the replies thereto, this matter has been placed on the agenda of the industry meeting scheduled for 12 April 2017.

We trust that the above is in order. Should you have any further queries, please do not hesitate to contact Ms. Grace Kandetu on telephone number (061) 290 5116.

Yours sincerely,



Kenneth S. Matomola

REGISTRAR OF SHORT-TERM INSURANCE AND LONG-TERM INSURANCE

	Insurer	COMMENTS/ DESCRIPTION OF THE ISSUE	REGISTRAR'S POSITION ON PROPOSED AMENDMENTS
1.	A	The directive should not imply to include employees of a locally registered insurer who operate in a call centre environment, who earn remuneration structures other than commission, to also register as agents.	Clause 3 of the draft directive specifically states that the requirement to register does not include the employees of the registered insurer who are not remunerated by way of commission. We can however clarify this further by stating "Therefore the non-commission earning employees (i.e remuneration does not include commission) of a registered insurer are not subject to the obligation to register as insurance agents in terms of the Short-Term Act and the Long-Term Act."
2.	B	Make use of 2 South African Based Call Centre Agents. Intend to register same before due date.	Noted. Applicants must comply with requirements set out in section 55 of the Long-Term Insurance Act and submit all documents and information required in the application for registration.
3.	C	What function needs to be performed by the call center agents that would require such agent to be registered? Is registration applicable to everyone or only those agents engaging a particular function?	The functions cited in the definition of insurance agent in section 1 of the Short-Term and Long-Term Insurance Acts. Registration only applicable to persons performing those functions.

5.	C	Would the registration requirements for these foreign agents be exactly the same as the local agents? What impact with different registration requirements have on the provisions of the LTI Act (section 55) and the STI Act (section 53)	Registration requirements will be the same. All applicants must comply with requirements set out in section 55 of the Long-Term Insurance Act and submit all documents and information required in the application for registration.
6.	C	Who is responsible for licensing fees? The foreign entity or the local insurance company making use of these services	The obligation to pay application fees and upon registration the annual levy, falls on the person seeking registration.
7.	C	How will NAMFISA regulate call centre agents who are not employed by the Namibian Financial Institution?	In the same manner as all registered agents are currently regulated. Agents will be loaded onto the profile of the registered insurer on whose behalf the agent will be acting.

8.	C	In the event of non-compliance, having foreign call centre agents, will the penalties be imposed to the Namibian/South African institution?	Action for non-compliances will be taken up with the registered agent as contemplated in the Short-Term Insurance Act, the Long-Term Insurance Act and the NAMFISA Act.
9.	D	Where employees of a local insurer are sitting in a foreign country – they do not need to register	Correct but only if such employee is not remunerated in a manner that comprises of commission. The local insurer must prove the presence of a direct employment relationship and provide evidence that the remuneration does not include commission.

10.	D	Where commission is paid by a local insurer to a call centre employee sitting in a foreign country – they must register	Correct. All applicants must comply with requirements set out in section 55 of the Long-Term Insurance Act and submit all documents and information required in the application for registration.
11.	D	Where call centre personnel are employees of a foreign entity - they must register	Correct. All applicants must comply with requirements set out in section 55 of the Long-Term Insurance Act and submit all documents and information required in the application for registration.
12.	D	Please consider elaborating on the basis upon which the Registrar alleges that the relationship is a direct employment relationship?	Not necessary for this to be elaborated in the directive. Elaboration: 1. The obligation to register persons who perform the functions of an insurance intermediary unless such persons are the non-commission earning employees of an insurer stems from need to ensure that due supervision is exercised over the persons performing these functions. In respect of the employees of a registered “local” insurer, the requirement to register is done

			away with, on account of recognition that such due supervision will be exercised by the registered "local" insurer as the conduct of these employees is directly attributable to the insurer. 2. The element of due supervision is absent in the case where there is no direct employment relationship between the agent and the registered insurer, and as such registration of agents is required to ensure that such supervision is exercised by the Registrar of Short-Term Insurance in terms of the Act. 3. The employment relationship referred to in the definition of "insurance agent" in section 1 of the Act, is a direct employment relationship between an agent and the insurer and not one where the employment services are rendered in favour of the insurer through another entity. The latter scenario is the same as the employees of a corporate agent performing the agent services in favour of the insurer through the corporate agent, in which scenario the employees of the corporate agent would not be regarded as the employees of the insurer even if there was an agreement between the insurer and the corporate agent to that effect.
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13.	D	The Labour Act of 2007 takes a very broad approach to "employees", surely the conclusion in paragraph 4 should mirror the provisions of the Labour Act, specifically the Labour Amendment Act of 2012 i.e deemed employees.	Comment at 12 above applies. In addition, section 128B of the Labour Act empowers the Minister to declare persons as deemed employees by notice in the Gazette and is not a status that be conferred by the registered insurer on call centre employees who are not ordinarily its employees.
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