

**GOVERNMENT NOTICE**

**INSURANCE**

NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**No. X**

**2018**

**STANDARDS MADE UNDER THE FINANCIAL INSTITUTIONS AND MARKETS ACT,  
2018**

The Namibia Financial Institutions Supervisory Authority has under section 410(3) of the Financial Institutions and Markets Act, 2018 (Act No. X of 2018), made the Standards set out in the Schedule.

**Gersom Katjimune**

**Chairperson**

**Windhoek,**

**2018**

DRAFT STANDARD

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TERMS AND CONDITIONS APPLICABLE TO:

- FOREIGN INSURERS AND FOREIGN REINSURERS EXEMPTED UNDER SECTION 5(2) OF THE ACT;
  - REGISTERED INSURERS AND REGISTERED BROKERS EFFECTING OR RENEWING INSURANCE OUTSIDE NAMIBIA; AND
  - REGISTERED INSURERS REINSURING THE WHOLE OR ANY PART OF THEIR BUSINESS
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NAMIBIA FINANCIAL INSTITUTIONS SUPERVISORY AUTHORITY

**Standard No: INS.S.2.5**

## **FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]**

### **Terms and conditions applicable to:**

- **Foreign insurers and foreign reinsurers exempted under section 5(2) of the Act;**
- **Registered insurers and registered brokers effecting or renewing insurance outside Namibia; and**
- **Registered insurers reinsuring the whole or any part of their business**

### **Standard No: INS.S.2.5**

*issued by NAMFISA under sections 5(3) and 410(3)(b), (c) and (h) of the Financial Institutions and Markets Act, 2018*

### **Definitions**

1. (1) In this Standard unless the context indicates otherwise—

- (a) “Act” means the *Financial Institutions and Markets Act, 2018* [Act No. • of 2018], and includes the regulations prescribed under the Act and the standards and other subordinate measures issued by NAMFISA under the Act; and
- (b) “exempted foreign insurer” or “exempted foreign reinsurer” means a foreign insurer or foreign reinsurer that has been granted an exemption by NAMFISA pursuant to clause 5.

(2) Words and phrases defined in the Act have the same meaning in this Standard, unless the context indicates otherwise, including without limitation, the following:

(a) as defined in section 1 of the Act—

- (i) client;
- (ii) NAMFISA;
- (iii) person;
- (iv) principal officer;

(b) as defined in section 4 of the Act—

- (i) foreign insurer;
- (ii) foreign reinsurer;

- (iii) insurance;
  - (iv) insurer;
  - (v) policy;
  - (vi) policyholder;
  - (vii) registered insurer;
  - (viii) registered reinsurer; and
- (c) registered insurance broker, as defined in section 53 of the Act.
  - (d) related party, as defined in section 410 (2) (o) of the Act.
2. This Standard applies to—
- (a) every foreign insurer and foreign reinsurer;
  - (b) every registered insurance broker proposing to effect or renew insurance with a foreign insurer or foreign reinsurer pursuant to section 70(2) of the Act; and
  - (c) every registered insurer or registered insurance broker proposing to reinsure the whole or any part of the business of a registered insurer.

**Part I: Terms and conditions applicable to foreign insurers and foreign reinsurers exempted under section 5 of the Act (clauses 3 to 8)**

3. (1) A registered insurance broker proposing to place insurance with a foreign insurer must make an application to NAMFISA for an exemption under section 5(2) of the Act, which application must be in the form of Schedule 1 to this Standard and must contain—
- (a) evidence that—
    - (i) the policy benefits required cannot be provided by a registered insurer; or
    - (ii) an explanation of the reason that the terms of the policy benefits that could be provided by one or more registered insurers, are not equitable.
- (2) A registered insurance broker or registered insurer proposing to place reinsurance with a foreign reinsurer must make an application to NAMFISA for an exemption under section 5(2) of the Act, which application must be in the form of Schedule 1 to this Standard, and must contain—

(a) evidence that—

- (i) the policy benefits required cannot be provided by a registered reinsurer; or
  - (ii) an explanation of the reason that the terms of the policy benefits that could be provided by one or more registered reinsurers, are not equitable; and
- (b) evidence that every registered reinsurer was offered an opportunity to participate in a reinsurance arrangement before considering placing the policy with a foreign reinsurer or with one or more foreign reinsurers.

(3) An application to NAMFISA referred to in sub-clauses (1) and (2) must contain a detailed description of the foreign insurer or foreign reinsurer in question, including:

- (a) its name and address;
- (b) its jurisdiction of incorporation or principal place of business;
- (c) the name and business address of its principal officer or other senior officer; and
- (d) the name and address of its principal foreign supervisory or regulatory authority.

4. (1) The application for an exemption referred to in clause 3 must be accompanied by a written undertaking from the foreign insurer or foreign reinsurer in the form of Schedule 2 to this Standard and as provided in sub-clause (2).

(2) The undertaking referred to in sub-clause (1) must state that the foreign insurer or foreign reinsurer—

- (a) will not undertake any insurance or reinsurance business in Namibia other than the issue of the specific policy in question and that it will not advertise or solicit any such business in Namibia with the exclusion of existing or future foreign exemption applications;
- (b) is registered or authorised in its jurisdiction of incorporation or the jurisdiction of its principal place of business to carry on the class of insurance business for which the proposed policy will be issued;
- (c) has capital equivalent at least to that which would be required for a registered insurer or registered reinsurer carrying on insurance business of the same class;
- (d) is in good standing with its principal foreign supervisory or regulatory authority;
- (e) has received consent from its principal foreign supervisory or regulatory authority to underwrite insurance in Namibia; and
- (f) the specific policy and any related documents to be issued by the foreign insurer or foreign reinsurer are in plain language in accordance with section 29 of the Act and Standard No. GEN.S. 10.17, Description of plain language.

(3) In addition to the undertaking referred to in sub-clause (2), a foreign reinsurer must submit proof that it has a credit rating of at least BBB with Standard & Poor's or an equivalent rating with any other international rating agency, which rating must have been maintained for at least the immediately preceding two years.

The credit rating equivalents are illustrated in the table below:

| <b>Credit rating category <i>i</i></b> | <b>Standard &amp; Poors<br/>Fitch<br/>GCR</b> | <b>Moody's</b> | <b>AM Best</b> |
|--|---|----------------|----------------|
| 1                                      | AAA to AA-                                    | Aaa to Aa3     | A++ to A-      |
| 2                                      | A+ to A-                                      | A1 to A3       | B++ to B+      |
| 3                                      | BBB+ to BBB-                                  | Baa1 to Baa3   | B to B-        |
| 4                                      | BB+ to BB-                                    | Ba1 to Ba3     | C++ to C+      |
| 5                                      | B+ to B-                                      | B1 to B3       | C to D         |
| 6                                      | CCC+ or below                                 | Caa1 or below  | E or below     |

5. (1) Upon receipt of an application referred to in clause 3 and the undertaking referred to in clause 4, NAMFISA may, if it considers it appropriate to do so, issue an exemption to the foreign insurer or foreign reinsurer pursuant to section 5(2) of the Act.

(2) NAMFISA may require any other information from—

(a) the foreign insurer or foreign reinsurer; and

(b) the registered insurance broker, registered insurer or registered reinsurer, as the case may be, as NAMFISA deems necessary or advisable.

6. An exemption granted by NAMFISA pursuant to section 5(2) of the Act and clause 5 shall include an exemption from the prohibition contained in section 6(1) of the Act.

7. The exemption referred to in clause 5 applies only to the issue of the specific policy in question and to no other business of insurance or reinsurance in Namibia undertaken by the foreign insurer or foreign reinsurer.

8. If, at any time, it comes to the attention of NAMFISA that the foreign insurer or foreign reinsurer is not in compliance with the undertaking referred to in clause 4, NAMFISA may take action against the registered insurance or reinsurance broker or insurer in terms of section 439 of the Act.

**Part II: Conditions or limitations applicable to a registered insurer or registered insurance broker effecting or renewing insurance outside Namibia**

9. (1) For the purposes of section 70, the annual cessionary limits and other requirements referred to in sub-clauses (2) to (5) apply to registered insurance brokers, registered insurers and registered reinsurers effecting or renewing insurance or reinsurance with an exempted foreign insurer or exempted foreign reinsurer.

(2) NAMFISA may require a registered insurer or registered reinsurer to justify its retention policy in a given calendar year to prevent registered insurers or registered reinsurers from merely fronting for foreign insurers and foreign reinsurers.

(3) The following limits apply to the amount of insurance business a registered insurer or registered reinsurer may cede in total (net of NamibRe cession) to an exempted foreign reinsurer in a calendar year:

|  |     |
|--|-----|
| Total cession of gross written premium                   | 75% |
| Aggregate cession to a single exempted foreign reinsurer | 75% |
| Cession to a related party                               | 50% |

(4) In the case of aviation, marine, nuclear energy or oil insurance or any other specialized class of insurance business, a registered insurer or registered reinsurer may apply to NAMFISA for approval to cede more than the limits specified in sub-clause (3).

(5) The proportion of insurance business ceded by a registered insurer or registered reinsurer to any one exempted foreign reinsurer in respect of any one risk must not exceed 80% of the sum insured or the liability limit of the underlying insurance policy, except in the case of specialized insurance business as referred to in sub-clause (4) or start up insurers or reinsurers with less than 3 years of operations.

**Part III: Terms and conditions applicable to reinsuring the whole or any part of the business of a registered insurer or registered reinsurer (clauses 10 and 11)**

10. A registered insurance broker placing insurance or reinsurance with an exempted foreign reinsurer must comply with the provisions of sections 70, 71 and 72 of the Act.

11. A registered insurance brokers, registered insurers and registered reinsurers are prohibited from placing an insurance risk with a foreign insurer or foreign reinsurer unless that foreign insurer or foreign reinsurer has received an exemption from NAMFISA pursuant to clause 5 with respect to the specific policy in question.

**Part IV: General**

12. For the purposes of Parts I, II and III of this Standard, where insurance or reinsurance has been placed with an exempted foreign insurer or an exempted foreign reinsurer, the registered insurance broker, registered insurer or registered reinsurer concerned must—

- (a) keep all records and notes of such insurance or reinsurance for inspection by NAMFISA for a period of 5 years after the term of the policy comes to end; and

- (b) bring to the attention of NAMFISA any material information that might impact the ability of the exempted foreign insurer or exempted foreign reinsurer to meet its commitments under the policy concerned.

### **SUPPORTING SCHEDULES**

The following supporting schedules are attached to and forms part of this Standard:

- (1) Application Form
- (2) Undertaking by foreign insurer or foreign reinsurer

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**SCHEDULE 1**

**APPLICATION**

**to NAMFISA for an exemption pursuant to section 5(2) of the *Financial Institutions and Markets Act, 2018* (Act No. • of 2018) (the “Act”)**

This application is made by/on behalf of \_\_\_\_\_,  
a registered insurance broker/registered insurer/registered reinsurer [*delete those that do not apply*] for an exemption pursuant to section 5(2) of the Act for

\_\_\_\_\_  
*[insert name of foreign insurer or foreign reinsurer]*

1. This application relates to the following proposed policy [*describe the policy which it is proposed be issued by the foreign insurer or foreign reinsurer issue*] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. Attached to this Application is evidence that no registered insurer or registered reinsurer is able to quote on this policy (no-quotes);

OR

If a registered insurer or registered reinsurer has provided a quote, explain below why the terms of such registered insurer or registered reinsurer are not equitable:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Name and address of the foreign insurer or foreign reinsurer:

\_\_\_\_\_  
\_\_\_\_\_

4. Name and business address of the principal officer or other senior officer of the foreign insurer or foreign reinsurer:

\_\_\_\_\_  
\_\_\_\_\_

5. The following is the jurisdiction of the incorporation or formation of the foreign insurer or foreign reinsurer or of its principal place of business:

\_\_\_\_\_

6. The following is the name and address of the principal foreign supervisory or regulatory authority of the foreign insurer or foreign reinsurer:

\_\_\_\_\_  
\_\_\_\_\_

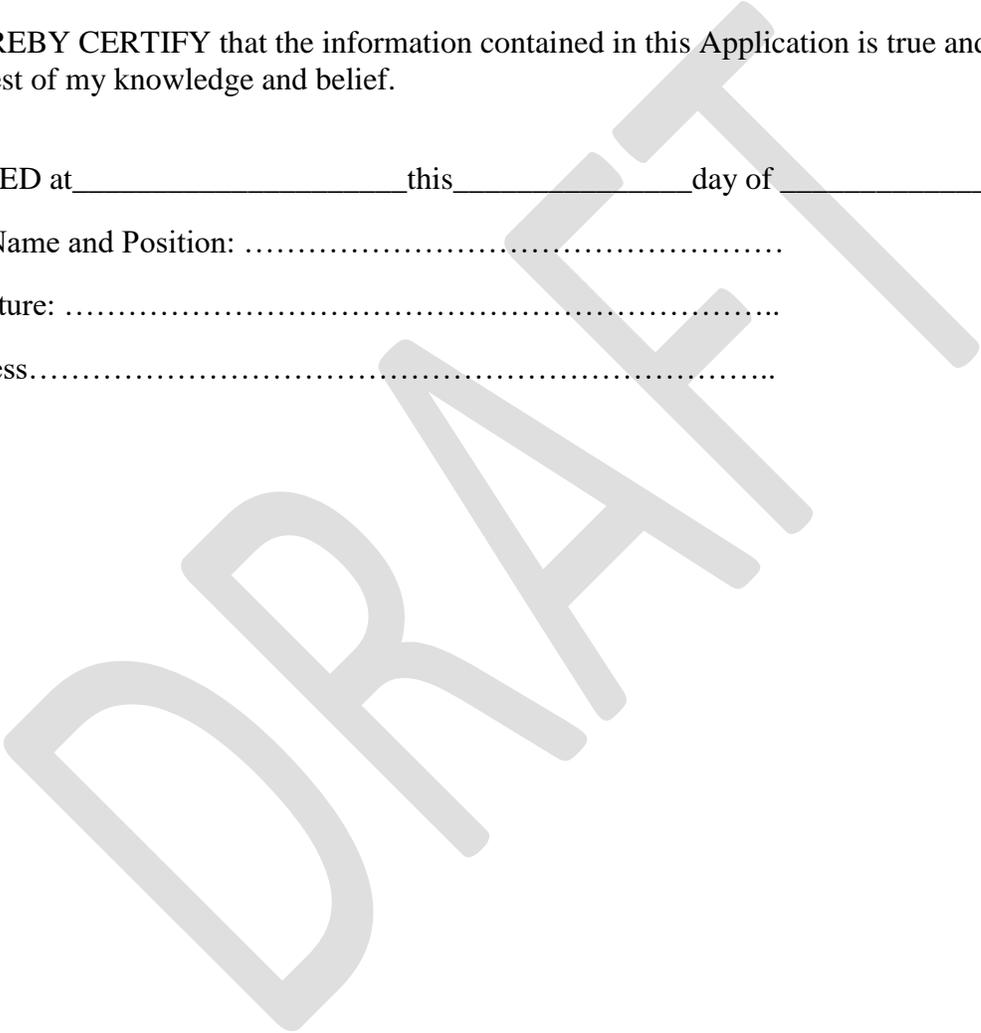
I HEREBY CERTIFY that the information contained in this Application is true and accurate to the best of my knowledge and belief.

SIGNED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20xx

Full Name and Position: .....

Signature: .....

Witness.....



**SCHEDULE 2**

**UNDERTAKING OF FOREIGN INSURER OR FOREIGN REINSURER**

**TO: The Namibian Financial Institutions Supervisory Authority (NAMFISA)**

I, the undersigned, \_\_\_\_\_ being the duly authorised officer  
of \_\_\_\_\_,

a foreign insurer/foreign reinsurer<sup>1</sup> (hereafter the “INSURER/REINSURER”) within the meaning of the *Financial Institutions and Markets Act, 2018* (Act No. • of 2018) of Namibia (hereafter the “Act”), hereby UNDERTAKE on behalf of the INSURER/REINSURER and in consideration of any exemption that may be granted to the INSURER/REINSURER by NAMFISA pursuant to section 5(2) of the Act with respect to the policy proposed to be issued,

THAT THE INSURER/REINSURER:

1. is registered in \_\_\_\_\_ and is authorised to carry on the class of insurance/reinsurance business for which the proposed policy will be issued;
2. is in good standing with its principal supervisory or regulatory authority, namely \_\_\_\_\_;
3. has received the consent of its principal supervisory or regulatory authority, referred to in item 3 above, to underwrite insurance/reinsurance in Namibia;
4. will not undertake any insurance or reinsurance business in Namibia other than the issue of the specific proposed policy and will not advertise or solicit any such business in Namibia;
5. has capital equivalent at least to that which would be required for a registered or registered reinsurer carrying on insurance business of the same class; and
6. <sup>2</sup>has a credit rating of at least BBB with Standard & Poor’s, which rating has been maintained for \_\_\_\_\_ years (*at least two years immediately preceding the date of the undertaking*)

OR

[an equivalent rating with another international rating agency - *insert rating and name of agency*]

\_\_\_\_\_ which

rating has been maintained for \_\_\_\_\_ years (*at least the two years immediately preceding the date of the undertaking*).

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<sup>1</sup> Delete as applicable

<sup>2</sup> Item # 6 applies only to foreign reinsurers; delete if not applicable

SIGNED on behalf of \_\_\_\_\_  
*(insert name of foreign insurer or foreign reinsurer)*

at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20xx

Full Name and Position: .....

Signature: .....

Witness.....

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