

FINANCIAL INSTITUTIONS AND MARKETS ACT, 2018 [Act No. • of 2018]
MATTERS WITH RESPECT TO ENTITIES COMMONLY KNOWN AS CELL
CAPTIVES

Standard No. INS.S.2.8

issued by NAMFISA under section 410(3)(w) 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;
 - (b) “captive” means an insurance or reinsurance structure created by a registered insurer or registered reinsurer for the purpose of providing cover for insurance risks of cell captives;
 - (c) “cell captive” means an insurance or reinsurance vehicle created by a registered insurer or registered reinsurer through a shareholder’s agreement, business agreement or any other agreement for the special purpose of covering the insurance risk which the cell owner, its associated party or any other party, is exposed to;
 - (d) “cell provider” means a registered insurer or registered reinsurer that transacts cell captive insurance business;
 - (e) “first party cell” means a cell captive where the special class of shares are issued to the cell owners providing the cell owners with the ability to underwrite their own insurance risks and that of their associates;
 - (f) “third party cell” means a cell captive where the special class of shares are issued to the cell owners to provide the cell owners with the ability to underwrite the insurance risks of third parties;
 - (g) “rent a captive” means a captive insurance business arrangement, excluding contingency policies, where the cell captive is specifically formed to provide captive facilities to unassociated parties and the cell provider capitalises the cell captive for a fee;

- (h) “cell captive insurance business” or “cell captive reinsurance business” means an arrangement for which a registered insurer or registered reinsurer carries on captive insurance or reinsurance business for or on behalf of its cell owners and shall include first party, third party and rent a captive; and
 - (i) “cell owner” means a person that owns a special class of shares issued by a cell provider or a person who has any other type of agreement with the cell provider with the intention to insure own assets, assets of associated parties or any other party by funding its capital or not.
- (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) affiliate;
 - (ii) associate;
 - (iii) client;
 - (iv) company;
 - (v) entity;
 - (vi) holding company;
 - (vii) person;
 - (viii) subsidiary;
 - (b) as defined in section 4 of the Act—
 - (i) class or classes;
 - (ii) insurance;
 - (iii) insurer;
 - (iv) reinsurer;
 - (v) policy;
 - (vi) policyholder;

- (vii) registered insurer;
- (viii) registered reinsurer;
- (ix) registered insurance intermediary; and
- (c) “registered insurance broker” as defined in section 53 of the Act.

2. This Standard applies to—

- (a) cell providers and their associates;
- (b) cell owners;
- (c) cell captive insurance and reinsurance policyholders; and
- (d) registered insurance intermediaries.

Conduct of business of cell captive insurer or reinsurer

3. (1) A cell provider must be a registered insurer or registered reinsurer under Part II of Chapter 2 of the Act and must comply on an ongoing basis with all the applicable provisions of the Act.

(2) A cell provider must, before—

- (a) entering into a shareholder’s agreement, business agreement or any other agreement governing its relationship with a cell owner; or
- (b) issuing shares to a cell owner,

ensure that the terms and conditions of the agreement and the issuing of the shares comply with the provisions of this Standard and forthwith notify NAMFISA.

(3) Sub-clause (2) shall also apply to any amendment or renewal of an agreement and to any amendment of the share conditions referred to in that sub-clause.

4. (1) A cell provider must not carry on any class of insurance or reinsurance business other than for the classes of insurance business registered under the Act.

(2) A cell provider may not act or operate as a front by transferring all risk to any other entity without underwriting or incurring any liability, and policies issued by the cell provider must clearly indicate that the cell provider is the underwriter.

- (3) A cell provider may transfer part of the risk to a registered reinsurer.
 - (4) A cell provider who underwrites unrelated insurance business risks within a cell captive should ensure that it has adequate risk management framework or policies and processes in places.
 - (5) Cell providers and cell owners must not use the cell captive arrangements for any purpose other than insurance business.
5. (1) The cell provider must have oversight arrangements to monitor the insurance market conduct of cell owners at all times.
- (2) The cell provider must ensure that the cell owner adheres to and complies with:-
 - (a) Standard No. GEN.S.9.3 - Corporate Governance; and
 - (b) Standard No. GEN.S.9.2 - Fit and Proper Requirements.
 - (3) The cell provider ultimately bears the insurance risk.
6. Registered insurance intermediaries engaging or transacting in cell captive insurance or reinsurance business must disclose to clients or potential clients, prior to the purchase of any insurance or reinsurance product:-
- (a) any conflict of interest in relation to the cell captive;
 - (b) that the client or potential client is entitled to obtain the insurance product from another registered cell captive insurer; and
 - (c) the proof of registration document as an intermediary.

Reporting

7. A cell provider must in addition to any requirements imposed by NAMFISA in terms of section 414 (3)(a) of the Act, report to NAMFISA on each cell captive's financial status and position by completing and submitting the annual returns in respect of short-term insurance and reinsurance business and long-term insurance and reinsurance business in accordance with Schedules 1 or 2 attached to this Standard.

Capital requirements

8. For the purposes of policyholder protection and ensuring financial stability of all types of cell captive insurance or reinsurance business referred to under clause 1(1)(e)(f) and (g), the cell provider must:-

- (a) ensure that each cell is financially sound;
- (b) in the case of a cell captive insurer or reinsurer where there is a third party or unaffiliated party to protect, hold necessary capital as required in terms of Standard No. INS.S. 2.1- Capital adequacy requirements for registered insurers;
- (c) ensure that there is sufficient and adequate reinsurance cover in place to meet all its obligations;
- (d) ensure that surplus assets of one cell are not used to offset liabilities in another cell;
- (e) ensure that the insurance risk of the cell provider shall not be limited to the funds available in a particular cell and that any benefits due to the policyholder must not be withheld due to non-performance of the cell captive;
- (f) ensure that surplus assets (i.e. excess of the value of assets over the value of the liabilities, including the statutory capital requirement) in a cell captive are not included in the total assets of the cell provider; and
- (g) ensure that the cell provider remains ultimately liable to the insured in the event of the cell captive having insufficient funds to meet a claim.

9. Consistent actuarial assumptions must be used between the cell captives, where appropriate, to value each cell captive's business, otherwise the valuator may take account of the experience of each cell captive when determining the basis for each cell captive.

10. The assets required to cover the liabilities (including statutory capital requirements or solvency capital requirements) of a cell captive shall not include investments in a cell owner.

11. (1) The cell provider may not use the assets of a cell captive which are required to cover liabilities (including statutory capital or solvency capital requirements) to make a loan to the cell owner.

(2) For the purposes of sub-clause (1), the cell owner also includes the subsidiaries, affiliates, associates or any other company being a subsidiary or associate of the ultimate holding company of the cell owner.

12. No ordinary or preference shares may be issued, whether directly or indirectly, to any

registered insurance or registered reinsurance brokers or its affiliate through cell captives.

Dissolution

13. (1) Subject to sub-clause (2), the dissolution of the cell captives shall be in accordance with the shareholders agreement or policy contract.

(2) The dissolution clause in the shareholders agreement or policy contract must comply with the requirements of the section 449 of the Act.

(3) Prior to dissolution of the cell captive, the cell provider’s valuator and auditor must carry out an evaluation of the cell captive’s assets and liabilities, state the impact of such dissolution on the cell captive insurer or reinsurer and issue a certified statement to NAMFISA for review and approval.

SUPPORTING SCHEDULES

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

Schedule 1: Financial statements for long-term cell captive insurers or reinsurers

Schedule 2 Financial statements for short-term cell captive insurers or reinsurers

SCHEDULE 1

Financial statements for a long-term cell captive insurer or reinsurer

STATEMENT OF COMPREHENSIVE INCOME	
LONG-TERM INSURANCE /REINSURANCE	
REPORTING PERIOD	
Gross premiums written	
Less: Reinsurance premium	
Net premiums written	
Gross policyholder benefits paid	
Reinsurance recoveries	

Net policyholders benefits	
Change in policyholder liabilities	
Commission paid	
POLICYHOLDER BENEFITS AND COMMISSION	
GROSS PROFIT/(LOSS)	
Investment income	
Other income	
TOTAL INCOME	
Management expenses	
Finance costs	
Other expenses	
TOTAL EXPENSES	
PROFIT BEFORE TAXATION	
LESS: Est. taxation (Current + def.)	
PROFIT FOR THE YEAR	
Other comprehensive income for the year	

STATEMENT OF CHANGES IN EQUITY							
Reporting Period:							
STATEMENT OF CHANGES IN EQUITY	Ordinary Share Capital	Share Premium	Retained Earnings	Contingency Reserve	Other Reserve	Total	Previous year
	N\$'000	N\$'000	N\$'000	N\$'000	N\$'000	N\$'000	
Balance At End Of Previous Year							
TOTAL COMPREHENSIVE INCOME							
Transfers To/From Contingency Reserve							
Transfers To/From Other Reserve							
Other							

Dividends Declared							
Balance At Current Year							

STATEMENT OF FINANCIAL POSITION	
LONG-TERM INSURANCE /REINSURANCE	
REPORTING PERIOD	
Immovable Property	
Property, plant and equipment	
Intangible assets	
Deferred tax	
Other assets	
Investments	
NON-CURRENT ASSETS	
Reinsurer's debtors	
Premium debtors	
TECHNICAL ASSETS	
Cash and cash equivalents	
Receivables	
Investments	
CURRENT ASSETS	
TOTAL ASSETS	
Deferred taxation	
Other non-current liabilities	
NON CURRENT LIABILITIES	
Policyholder liabilities	
Reinsurance creditors	
TECHNICAL LIABILITIES	
Trade and other payables	
Current income taxation	

CAR	
Other current liabilities	
CURRENT LIABILITIES	
TOTAL LIABILITIES	
Excess Assets	

SCHEDULE 2

Financial statements for a short-term cell captive insurer or reinsurer

STATEMENT OF COMPREHENSIVE INCOME	
Reporting Period:	
	N\$'000
Gross premiums written	
Less: Reinsurance premium	
Net premiums written	
Change in provision for unearned premiums	
Net Premiums Earned	
Gross claims and loss adjustment expenses	
Change in Incurred But Not Reported	
Less: Gross claims and loss adjustment expenses recovered from reinsurers	
Net Claims incurred	
Commission incurred	
Less: Commission earned	
Net commission incurred	
Claims And Commissions	
Underwriting Surplus/Loss	
Management expenses	
Investment income	
Finance costs	
Other income	

Profit Before Taxation	
Less: Est. taxation (Current + def.)	
Profit For The Year	
Other comprehensive income for the year	
Total Comprehensive Income for the year	

STATEMENT OF CHANGE IN EQUITY							
Reporting Period:							
STATEMENT OF CHANGES IN EQUITY	Ordinary Share Capital	Share Premium	Retained Earnings	Contingency Reserve	Other Reserve	Total	Previous year
	N\$'000	N\$'000	N\$'000	N\$'000	N\$'000	N\$'000	
Balance At End Of Previous Year							
TOTAL COMPREHENSIVE INCOME							
Transfers To/From Contingency Reserve							
Transfers To/From Other Reserve							
Other							
Dividends Declared							
Balance At Current Year							

STATEMENT OF FINANCIAL POSITION	
SHORT-TERM INSURANCE /REINSURANCE	
REPORTING PERIOD	N\$'000
Non-Current Assets	
Immovable Property	
Motor Vehicle And Office Equipment	
Intangible Assets	
Deferred Tax	
Other Assets	
Investment	

Total Non-Current Assets	
Cash And Cash Equivalents	
Total Other Receivables	
Other Receivables- Please specify	
Other Receivables	
Subrogate receivables	
Asset portion of inter-company account	
Agent balances - Reinsurance	
VAT balance (net of doubtful debts)	
Sundry debtors	
Investment	
Total Current Assets	
Reinsurers' Share Of Unearned Premiums	
Reinsurers' Share Of Outstanding Claims	
Reinsurers' Share Of Claims Incurred But Not Reported	
Commission Receivable	
Premium Debtors	
Total Technical Assets	
Total Assets	