

CIRCULAR

NO. : I/LTI/01/2021

**TO : ALL REGISTERED LONG-TERM INSURERS AND REINSURERS
ALL REGISTERED LONG-TERM INSURANCE BROKERS AND AGENTS
NAMIBIA INSURANCE ASSOCIATION
NAMIBIA INSURANCE BROKERS ASSOCIATION
ASSOCIATION OF INSURANCE MARKETERS
NAMIBIAN SAVINGS AND INVESTMENTS ASSOCIATION**

DATE : 14 DECEMBER 2021

EFFECTIVE DATE : 01 FEBRUARY 2022

SUBJECT : INTERPRETATION OF THE LIMITS OF INVESTMENT IN TERMS OF REGULATION 15 OF THE REGULATIONS UNDER THE LONG-TERM INSURANCE ACT, 1998

1. INTRODUCTION

- 1.1 This Circular is issued by virtue of the functions and powers Namibia Financial Institutions Supervisory Authority and those of its Chief Executive Officer in his capacity as the Registrar of all registered long-term insurers and reinsurers (“the Registrar”) in terms of the Long-term Insurance Act, 1998 (Act No. 5 of 1998) (“the

LTI Act”), read with the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001). This Circular is applicable to all long-term insurers and reinsurers (“insurers” and “reinsurers”, respectively) registered under the LTI Act.

- 1.2 The purpose of this Circular is to notify the long-term insurance industry of the correct interpretation of Regulation 15 of the regulations made under the LTI Act. As such, **Circular No. I/STI<I/01/2021**, pertaining to reporting on the limits of investments in terms of Regulations 8 and 15 of the Short-term and Long-term Insurance Acts, 1998, dated 30 April 2021 is hereby withdrawn and replaced with this **Circular No. I/LTI/01/2021**.

2. THE CURRENT PRACTICE

- 2.1 It has been brought to the Registrar’s attention that the current practice in terms of which insurers and reinsurers use shareholder assets (surplus funds) together with policyholder assets (funds) to determine their compliance with Regulation 15 of the regulations made under the LTI Act (“the Regulations”), meaning that they report their investment holdings on a total balance sheet basis, which is not in accordance with the requirements of the relevant sub-regulations under Regulation 15 of the regulations.
- 2.2 The above-mentioned practice has resulted in apparent breaches of the Regulation 15 limits of investment and when insurers and reinsurers are notified of the said breaches, they simply attribute the assets over and above the limits of investment per investment category/institution to “shareholder assets”. This makes the assessment of insurers’ and reinsurers’ compliance with Regulation 15(1) of the regulations difficult.
- 2.3 While the manner in which insurers and reinsurers complete their Regulation 15 return is suitable for purposes of Regulation 15(2), which refers to the market value of total assets, it is not suitable for purposes of Regulation 15(1), which refers to

the assets which an insurer or reinsurer is required to hold in terms of sections 26 and 27 of the LTI Act.

3. THE LAW

3.1 Regulations 15(1), 15(2) and 15(5) of the regulations made under the LTI Act

3.1.1 In terms of section 72(1)(n) of the LTI Act, the Minister of Finance is empowered to make regulations limiting the amount and the extent to which a registered insurer and reinsurer may invest –

- (i) outside Namibia;
- (ii) in a particular asset or in particular kinds or categories of assets whether in Namibia or elsewhere, prescribing the basis on which the limit shall be determined and defining the kinds or categories of assets to which the limit applies.

3.1.2 Pursuant to the above-mentioned provision, the Minister of Finance made Regulation 15, which provides for limits of investments by insurers and reinsurers. For purposes of this Circular, the relevant subregulations are 15(1), 15(2) and 15(5).

3.1.3 Regulation 15(1) provides as follows:

“(1) The value of the assets which every registered insurer and every reinsurer is, subject to the provisions of subregulation (5), required to hold in respect of its long-term insurance business in terms of sections 26 and 27 of the Act, shall not, in respect of the kinds or categories of assets set out in Column 2 of Annexure C, exceed the percentage set out opposite each such kind or category of asset in Column 3 of that Annexure, which percentage expresses a maximum percentage of the aggregate liabilities of the long-term insurance business of the registered insurer or reinsurer, except for assets of the kind or category referred to in item 10 where the

percentage expresses a percentage of the market value of the investments of the registered insurer or reinsurer.”

3.1.4 Regulation 15(2) provides as follows:

“Notwithstanding subregulation (1), a registered insurer or reinsurer shall, in respect of its long-term insurance business, invest in domestic assets not less than the following percentages of the market value of its total assets, at all times after the following dates -

(a) 31 August 2018, not less than 40%;

(b) 30 November 2018, not less than 42.5%; and

(c) 31 March 2019, not less than 45%.”

3.1.5 Regulation 15(5) provides as follows:

“Notwithstanding subregulation (1), every registered insurer or reinsurer shall invest 1.75 per cent of the market value of its investments in unlisted investments, but the unlisted investments may cumulatively not exceed 3.5 per cent of the market value of a registered insurer or reinsurer’s investments.”

3.1.6 In terms of Regulation 1 of the Regulations under the LTI Act, the term “unlisted investment” is defined to mean an investment that takes the form of equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange. Thus, a mere transfer of funds to an unlisted investment manager will not meet the requirements of Regulation 15(5).

4. INTERPRETATION OF REGULATIONS 15(1), 15(2) and 15(5)

4.1 Regulation 15(1) of the regulations provides for the limits of investment in respect of specific kinds or categories of assets and apply to those assets required to be held in terms of sections 26 and 27 of the LTI Act for the purposes of policyholder protection. Accordingly, Regulation 15(1) only applies to “policyholder assets” that are required to be held in terms of sections 26 and 27 of the LTI Act.

- 4.2 The language employed in Regulation 15(1) is notably different from the language employed in Regulation 15(2) of the regulations. Regulation 15(1), which provides for the limits of investment in respect of specific kinds or categories of assets, refers to sections 26 and 27 of the LTI Act, whereas Regulation 15(2), which provides for the domestic asset requirement, does not refer to section 26 or 27 of the LTI Act.
- 4.3 Although the term “total assets” in Regulation 15(2) is neither defined in the LTI Act nor in the regulations, in relation to an insurer or reinsurer specifically, the ordinary grammatical meaning of the words “total” and “asset” reveal that the term “total assets” must be interpreted to mean all the assets of the insurer or reinsurer, regardless of whether they are attributable to policyholders or to shareholders. As such, Regulation 15(2) applies to the total assets of an insurer or reinsurer, including shareholder assets.
- 4.4 The value of the investments of an insurer or reinsurer in unlisted investments in terms of Regulation 15(5) of the regulations made under the LTI Act is calculated based on a percentage (which is between 1.75% and 3.5%) of the market value of an insurer or reinsurer’s investments.
- 4.5 In light of the fact that the term “unlisted investment” means an investment that takes the form of equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange, a mere transfer of funds to an unlisted investment manager will not meet the requirements of Regulation 15(5).

5. THE PRACTICE GOING FORWARD

- 5.1 All registered insurers and reinsurers should therefore ensure that they comply with the limits of investment as stipulated in Regulations 15(1), 15(2) and 15(5) of the regulations in line with the above-mentioned interpretation. Regulations 15(1), 15(2) and 15(5) provide for 3 distinct limits of investment as reiterated below:

- 5.1.1 Regulation 15(1) only applies to “policyholder assets” that are required to be held in terms of sections 26 and 27 of the LTI Act and not to total assets;
 - 5.1.2 Regulation 15(2) applies to total assets, meaning both “policyholder assets” and “shareholder assets”; and
 - 5.1.3 Regulation 15(5) only applies to the investments of an insurer or re-insurer which is calculated based on a percentage (which is between 1.75% and 3.5%) of the market value of an insurer or reinsurer’s investments.
- 5.2 In order to comply with Regulation 15(5), an insurer’s or reinsurer’s investments in unlisted investments must take the form of equity or debt capital in a company incorporated in Namibia and not listed on any stock exchange, which investments must constitute between 1.75% and 3.5% of the market value of an insurer or reinsurer’s investments. Thus, a mere transfer of funds to an unlisted investment manager will not meet the requirements of Regulation 15(5).

We trust that all registered insurers and reinsurers will give their full cooperation to ensure that policyholders are protected.

KENNETH S. MATOMOLA
REGISTRAR OF LONG-TERM INSURANCE