

CIRCULAR

NO. : I/STI/02/2021

**TO : ALL REGISTERED SHORT-TERM INSURERS AND REINSURERS
ALL REGISTERED SHORT-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 8 OF THE REGULATIONS UNDER THE SHORT-TERM INSURANCE ACT, 1998

1. INTRODUCTION

- 1.1 This Circular is issued by virtue of the functions and powers of the Namibia Financial Institutions Supervisory Authority and those of its Chief Executive Officer in his capacity as the Registrar of all registered short-term insurers and reinsurers (“the Registrar”) in terms of the Short-term Insurance Act, 1998 (Act No. 4 of 1998)

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

- 1.2 The purpose of this Circular is to notify the short-term insurance industry of the correct interpretation of Regulation 8 of the regulations made under the STI 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in terms of Regulations 8 and 15 of the Short-term and Long-term Insurance Acts, 1998, dated 30 April 2021 is hereby withdrawn and replaced with this **Circular No. I/STI/02/2021**.

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 8 of the regulations made under the STI Act ("the Regulations"), meaning that they report their investment holdings on a total balance sheet basis, is not in accordance with the requirements of the relevant sub-regulations under Regulation 8 of the regulations.
- 2.2 The above-mentioned practice has resulted in apparent breaches of the Regulation 8(1) 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 8(1) of the regulations difficult.
- 2.3 While the manner in which insurers and reinsurers complete their Regulation 8 return is suitable for purposes of Regulation 8(4), which refers to the market value

of total assets, it is not suitable for purposes of Regulation 8(1), which refers to the assets which an insurer or reinsurer is required to hold in terms of sections 26 and 27 of the STI Act.

3. THE LAW

3.1 Regulations 8(1) and 8(4) of the regulations made under the STI Act

3.1.1 In terms of section 71(1)(j) of the STI 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 8, which provides for limits of investments by insurers and reinsurers. For purposes of this Circular, the relevant subregulations are 8(1) and 8(4).

3.1.3 Regulation 8(1) provides as follows:

“The value of the assets which every registered insurer and every reinsurer is, subject to the provisions of subregulation (2), required to hold in respect of its short-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 the first column of Annexure B, exceed the percentage set out opposite each such kind or category of asset in the second column of that Annexure, which percentage expresses a maximum percentage of the aggregate liabilities of the short-term insurance business of the registered insurer or reinsurer.”

3.1.4 Regulation 8(4) provides as follows:

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

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

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

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

4. INTERPRETATION OF REGULATIONS 8(1) and 8(4)

- 4.1 Regulation 8(1) of the regulations provides for the limits of investment in respect of specific kinds or categories of assets and only apply to those assets required to be held in terms of sections 26 and 27 of the STI Act for purposes of policyholder protection. Accordingly, Regulation 8(1) only applies to “policyholder assets” that are required to be held in terms of sections 26 and 27 of the STI Act.
- 4.2 The language employed in Regulation 8(1) is notably different from the language employed in Regulation 8(4) of the regulations. Regulation 8(1), which provides for the limits of investments in respect of specific kinds or categories of assets, refers to sections 26 and 27 of the STI Act, whereas Regulation 8(4), which provides for the domestic asset requirement, does not refer to section 26 or 27 of the STI Act.
- 4.3 Although the term “total assets” in Regulation 8(4) is neither defined in the STI 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 8(4) applies to the total assets of an insurer or reinsurer, including shareholder assets.

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 8(1) and 8(4) of the regulations in line with the above-mentioned interpretation. Regulations 8(1) and 8(4) provide for 2 distinct limits of investment as reiterated below:

5.1.1 Regulation 8(1) only applies to “policyholder assets” that are required to be held in terms of sections 26 and 27 of the STI Act and not to total assets; and

5.1.2 Regulation 8(4) applies to total assets, meaning both “policyholder assets” and “shareholder assets”.

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

KENNETH S. MATOMOLA
REGISTRAR OF SHORT-TERM INSURANCE