



Republic of Namibia

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**INSURANCE BROKERS AND THE INSURER'S COMPLIANCE WITH
THE FINANCIAL INTELLIGENCE ACT, 2012 AND SUBORDINATE
INSTRUMENTS**

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1. INTRODUCTION AND BACKGROUND

The Financial Intelligence Centre (FIC) as part of its continuous efforts to assist the Government of the Republic of Namibia in combatting Money Laundering (ML), Terrorism Financing (TF) and Proliferation Financing (PF), hereby issues this Directive in terms of Sections 9(1)(f) and 9(2)(g) of the Financial Intelligence Act, 2012 (Act No. 13 of 2012) as amended (hereinafter referred to as the FIA).

Long-term and Short-term insurers (“insurers”) are amongst the Accountable Institutions (“AIs”) and Reportable Institutions (“RIs”) that conduct part of their business through insurance brokers (independent intermediaries), who represent the interests of the clients and not the interest of the insurer. Insurance brokers thus form part of the distribution channels of insurers.

As a result of the brokers’ involvement in the distribution channels of insurers, it has been brought to the attention of NAMFISA and the FIC that some insurance brokers are not complying with the full “identification and verification of client”/customer due diligence requirements of the FIA and its regulations when selling/brokering insurance products to the general public. It is alleged that insurance products of those insurers with “less questions and requirements” are promoted and sold to the public, creating an impression that all insurers are not equally required to comply with their obligations under the FIA.

If the above-mentioned practice indeed exists it exposes insurers to the risks of non-compliance with Customer Due Diligence (CDD) and Enhanced Due Diligence (EDD) obligations, with a knock-on effect on the following FIA obligations:

- i) Transaction monitoring;
- ii) Record keeping;
- iii) Reporting of suspicious transactions and activities; and
- iv) Screening of clients against the United Nations Security Council (UNSC) Sanctions Lists.

In order to avert and mitigate the above-mentioned possible ML/TF/PF emerging risks, insurers sought advice from NAMFISA and the FIC considering the below factors:

- a) that insurance brokers are not regarded under the FIA as AIs or RIs which requires them to implement, at a minimum, the necessary CDD or EDD measures to mitigate ML, TF and PF risks;
- b) that insurance brokers are not supervised for ML, TF and PF purposes, but poses a risk to insurers for non-compliance with the FIA, its complimenting regulations and determinations, notices, circulars, guidance notes and directives issued in terms of the FIA;
- c) that above-mentioned non-compliance with FIA obligations in turn exposes the whole insurance industry to ML, TF or PF risks; and
- d) that administrative sanctions are not extended to insurance brokers when an insurer is sanctioned for non-compliance with the FIA.

Having considered the above, the FIC decided to issue a directive to address the possible emerging ML/TF or PF risks in the insurance industry.

In terms of section 9(1)(f) it is the FIC's legal mandate to coordinate the activities of the various persons, bodies or institutions involved in the combating of money laundering and the financing of terrorism or proliferation. Since insurance brokers are part of the distribution channels of insurers when selling insurance products to clients, they are captured by this section, giving the FIC the authority to issue them with a directive in the name of coordinating activities.

Furthermore, section 9(2)(g) provide the FIC with the power to exercise any other power or to do any other thing not inconsistent with this FIA, which is necessary or expedient to ensure the achievement of the objects of this FIA.

2. PURPOSE

The purpose of this Directive is to avert the possible ML/TF or PF emerging risk as a result of non-compliance with CDD and/or EDD requirements when insurance brokers sell insurance products to the public.

3. APPLICATION

3.1 The directive is applicable to –

(a) insurers whose products are sold through independent intermediary insurance brokers; and

(b) insurance brokers when representing the interest of the clients during the brokering/selling of insurance products.

3.2 The directive is not applicable to insurance agents as they are annexed intermediaries (not independent intermediaries), and they are directly controlled by insurers.

3.3 This directive will become effective from the date of issue.

4. DIRECTIVES

4.1 Insurance brokers that are rendering investment advice are regarded as AIs in terms of item 9 to Schedule 1 of the FIA, and they have full obligations under the FIA and are hereby directed to put measures in place in order to mitigate ML, TF and PF risks.

4.2 Insurance brokers that are part of the distribution channels of insurers when selling insurance products to the public are hereby directed to –

4.2.1 comply with identification and verification requirements of the FIA, as provided for in sections 21 - 22, read with regulations 4 – 15 of the FIA,

4.2.2 keep records of all information and documents gathered during the identification and verification process, as provided for in section 26-27, read with regulations 17-18, and avail such identification information to the insurer and/or competent authorities upon request, and

4.2.3 inform the FIC of any insurer that is not compliant with their FIA identification and verification obligations.

5. IMPLEMENTATION

For purposes of implementing the above Directives the FIC advises that:

(a) Insurers make it a condition of accreditation that insurance brokers must implement the insurers' AML/CFT/CPF policies and procedures regarding identification and recordkeeping at the broker's level, in order to mitigate ML, TF and PF risks.

(b) Insurers and insurance brokers, on the basis of accreditation, may agree on how best the insurers' AML/CFT/CPF policies and procedures can be implemented at the insurance brokers' level. This includes, but is not limited to:

- obtaining clients' identification information when a business relationship is being established;
- screening of clients against the United Nations Security Council (UNSC) sanctions lists;
- verification of clients' information using independent source documents or databases;
- keeping clients' information up-to-date;
- transaction monitoring;
- detecting suspicious patterns of behaviour;
- keeping records in a manner that such records are readily available to the insurer or competent authorities; or

- any other requirements or procedures under the Insurers' AML/CFT/CPF policies and procedures which is impacted by the involvement of Insurance Brokers in the distribution channels of the Insurers.

(c) Insurers and insurance brokers may agree on how insurers will continuously monitor implementation of the agreed measures in terms of the insurers' AML/CFT/CPF policies and procedures;

6. NON-COMPLIANCE WITH THIS DIRECTIVE

6.1 Non-compliance with this Directive amounts to non-compliance with the provisions of section 63 (f) of the FIA.

6.2 Anyone who contravenes or fails to comply with this Directive commits an offence and is liable to a fine not exceeding NAD 100 million or, where the commission of the offence is attributable to a representative of a legal person, to such fine or imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.

This Directive provides an interpretation of the relevant provisions of the FIA and its accompanying Regulations. It contains statements of policy which reflect the FIC's administration of the legislation in carrying out its statutory mandate.

The Directive can be accessed at www.fic.na.

DIRECTOR: FINANCIAL INTELLIGENCE CENTRE