



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$6.00

WINDHOEK - 17 August 2016

No. 6095

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General Notices

NAMIBIAN COMPETITION COMMISSION

No. 340

2016

EXTENSION OF EFFECTIVE DATE: DECISION REGARDING EXEMPTION IN RESPECT OF PROFESSIONAL RULES: THE LAW SOCIETY OF NAMIBIA

FILE NUMBER: 2010DEC0054EXEMP

1. The Namibian Competition Commission ("the Commission") on 23 December 2015 published a notice in Government Gazette No. 5906, General Notice No. 564 of 2015 in terms of which the Commission granted exemption in respect of some of the Law Society of Namibia's professional rules and declined to grant exemption in respect of some of the professional rules.
2. As per the above-mentioned notice, the Commission's decision was to take effect on 1 July 2016. The Law Society of Namibia ("LSN") however indicated to the Commission that it will not be able to give effect to the Commission's exemption decision by 1 July 2016 and that it will only be able to give effect by 1 July 2017.

3. Upon proper and due consideration of the LSN's request for extension of the above-referenced effective date and the reasons provided for the aforementioned request, the Commission herewith extends the effective date of its exemption decision from 1 July 2016 to 1 July 2017.

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

NAMIBIAN COMPETITION COMMISSION

No. 341

2016

NOTICE OF CONSENT AGREEMENT TO BE SUBMITTED TO COURT: NAMIBIAN
COMPETITION COMMISSION ("THE COMMISSION") // SANLAM NAMIBIA LIMITED,
SANLAM LIFE NAMIBIA LIMITED, PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY LIMITED (SOUTH AFRICA) AND PROFESSIONAL PROVIDENT SOCIETY
INSURANCE COMPANY NAMIBIA LIMITED ("THE RESPONDENTS")

CASE NUMBER: 2011MAR0014INV
COMPETITION ACT, 2003
(Section 41, Rule 20(1))

1. The Commission initiated complaints and started investigations against the above named Respondents in terms of the Competition Act, 2003 (Act No. 2 of 2003) ("the Act"). Before the Commission issued a notice of a proposed decision in accordance with section 36 of the Act, the Commission and the Respondents on 2 August 2016 entered into a consent agreement in terms of section 40 of the Act.
2. The Commission gives notice that it intends to submit the attached consent agreement with the following undertakings:
 - 2.1 Sanlam Namibia Limited;
 - 2.2 Sanlam Life Namibia Limited;
 - 2.3 Professional Provident Society Insurance Company Limited (South Africa) and
 - 2.4 Professional Provident Society Insurance Company Namibia Limitedto the Court for confirmation as an order of the Court as contemplated in section 40(1) of the Act.
3. The nature of the conduct that is the subject of the consent agreement is:
 - 3.1 The Commission investigated the Respondents for having entered into a Marketing Agreement in alleged contravention of section 23 of the Act.
 - 3.2 In the course of the Commission's investigation to date, the Commission came to a preliminary view that the conduct relating to the Marketing Agreement contravened section 23 of the Act.
4. This notice repeals General Notice No. 238 of 9 June 2015.
5. The Commission and the Respondents agree to settle the matter on the terms and conditions of the consent agreement attached to this notice.

**S. AKWEENDA
CHAIRPERSON
NAMIBIAN COMPETITION COMMISSION**

**IN THE HIGH COURT OF NAMIBIA
(Main Division)**

CASE NO.:

In the matter between:

NAMIBIAN COMPETITION COMMISSION

APPLICANT

and

**SANLAM NAMIBIA LIMITED
SANLAM LIFE NAMIBIA LIMITED**

**FIRST RESPONDENT
SECOND RESPONDENT**

**PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY LIMITED (SOUTH AFRICA)**

THIRD RESPONDENT

**PROFESSIONAL PROVIDENT SOCIETY INSURANCE
COMPANY NAMIBIA LIMITED**

FOURTH RESPONDENT

**CONSENT AGREEMENT BETWEEN THE APPLICANT ON THE ONE HAND AND
THE RESPONDENTS ON THE OTHER HAND IN RESPECT OF AN INVESTIGATION
PERTAINING TO ALLEGED CONTRAVENTION OF SECTION 23 (1) OF THE
COMPETITION ACT, 2003 (ACT NO. 2 OF 2003)**

WHEREAS the Commission initiated complaints and started an investigation into the conduct of the Parties for an alleged contravention of section 23(1) of the Act.

AND WHEREAS the Parties, in settlement of the investigation by the Commission under case number: 2011MAR0014INV, have decided to enter into a Consent Agreement as contemplated in section 40(1) of the Act.

NOW THEREFORE the Commission and the Parties hereby agree that an application be made to the High Court of Namibia for confirmation of this Consent Agreement as an order of the High Court of Namibia in terms of section 40 read with section 52 of the Act in the terms set out below:

1. DEFINITIONS

In this Consent Agreement, unless the context indicates otherwise, the following definitions shall apply:

- 1.1** “Act” means the Competition Act, 2003 (Act No. 2 of 2003);
- 1.2** “Commission” means the Namibian Competition Commission, a juristic person as established in terms of section 4 of the Act;
- 1.3** “Complaints” means the complaints initiated by the Commission under case number 2011MAR0014INV, in terms of Rule 14 of the Rules made under the Act as published in Government Gazette No. 4004, General Notice No. 41 of 2008;
- 1.4** “Consent Agreement” means this Consent Agreement, duly signed and concluded between the Commission and the Parties, as contemplated in section 40(1) of the Act;

- 1.5** “**Investigation**” means the investigation into Complaints initiated by the Commission in terms of section 33(1) of the Act;
- 1.6** “**Marketing Agreement**” means the agreement entered into between Sanlam Namibia Limited, Sanlam Life Namibia Limited, Professional Provident Society Insurance Company Limited (South Africa) and Professional Provident Society Insurance Company Namibia Limited finally signed during September 2011; and
- 1.7** “**Parties**” means:
- 1.7.1** **Sanlam Namibia Limited** a company duly incorporated in accordance with the laws of the Republic of Namibia;
- 1.7.2** **Sanlam Life Namibia Limited** a limited company duly incorporated in accordance with the laws of the Republic of Namibia;
- 1.7.3** **Professional Provident Society Insurance Company Limited (South Africa)**, a company duly incorporated in accordance with the laws of the Republic of South Africa; and
- 1.7.4** **Professional Provident Society Insurance Company Namibia Limited** a company duly incorporated in accordance with the laws of the Republic of Namibia.

2. CONDUCT

- 2.1** In the course of the Investigation to date the Commission came to a preliminary view that the conduct related to the Marketing Agreement contravened section 23 of the Act.
- 2.2** The Parties contend that the Marketing Agreement reflects a *bona fide* joint venture in the interests of Namibian consumers that was not intended to exclude competition.
- 2.3** Notwithstanding, the Commission and the Parties have agreed to settle the matter on the terms and conditions herein in full and final settlement.

3. ADMISSION OF LIABILITY

The Parties admit that the Marketing Agreement constitutes an unintended contravention of section 23(1) of the Act.

4. CESSATION OF MARKETING AGREEMENT

- 4.1** The Parties shall immediately take, and continue to take, all necessary and proactive steps to ensure that the Marketing Agreement shall be in a position to cease within a period of one year from the date of confirmation of the Consent Agreement as an order of the Court (unless exempted and/or approved by the Commission as contemplated in clause 4.2 below prior to the date of the aforementioned confirmation).
- 4.2** Notwithstanding clause 4.1, should the Parties elect to take steps to cause the Marketing Agreement to be regularised and/or approved in terms of the Act, including (without limitation) to apply for exemption in terms of section 27 of the Act, those steps shall be initiated within a period of thirty calendar days after the date of last signature of this Consent Agreement (or such longer period as the Commission and Parties may agree in writing). The Commission commits to consider any exemption application duly and expeditiously and within a period of six months from the date on which it is duly submitted.

- 4.3** To ensure that consumers are not adversely affected by the immediate implementation of the Consent Agreement, the Parties shall, during the aforementioned thirty calendar day period and for the duration of the Commission's consideration of such exemption application, be entitled to write new Risk Provider Series policies, notwithstanding any other provision in the Consent Agreement.
- 4.4** In the event that the exemption application is not successful, the Parties shall as soon as feasible but in any event no later than thirty days after they are informed of that decision, cease writing the aforementioned new policies but continue to perform the balance of their rights and obligations under the Marketing Agreement for the unexpired portion of the one year period referred to in clause 4.1 (in a fashion consistent with the requirements of clause 4.1).
- 4.5** Subject to the outcome of the processes contemplated by clause 4.2, the Parties undertake to cooperate with the Commission in future by providing proof and/or documentary evidence that the Marketing Agreement has ceased to be in operation within one year of the Consent Agreement being confirmed as an order of the Court.
- 4.6** For the avoidance of doubt, to ensure that consumers are not adversely affected by the immediate implementation of the Consent Agreement, the Parties shall in the event that no exemption application or other regularisation application is made within the thirty day period referred to in clause 4.2, be entitled to write new Risk Provider Series policies for a period of seven months after last signature of the Consent Agreement, notwithstanding any other provision in the Consent Agreement and continue to perform the balance of their rights and obligations under the Marketing Agreement for the unexpired portion of the one year period referred to in clause 4.1 (in a fashion consistent with clause 4.1).

5. AGREEMENT CONCERNING FUTURE CONDUCT

- 5.1** The Parties will prepare a statement summarising the content of the Consent Agreement to their employees who are in management within thirty days of the date of the confirmation of the Consent Agreement as an order of the Court.
- 5.2** The Parties shall act in accordance with the terms of the Consent Agreement and will refrain from engaging in conduct contrary to the provisions of the Act.
- 5.3** The Parties will develop and implement a compliance programme to ensure that their employees, management and directors do not engage in any conduct that is prohibited in terms of the Act.
- 5.4** A copy of the compliance programme will be supplied to the Commission within sixty days from the date of confirmation of this Consent Agreement as an order of the Court.

6. PENALTY

- 6.1** The Parties will pay a penalty of N\$15 000 000 (fifteen million Namibian dollars), jointly and severally the one paying the others to be absolved.
- 6.2** The Parties will pay the amount within one year after the Consent Agreement is confirmed as an order of the Court.
- 6.3** The Parties shall remit payment of the penalty into the following bank account:

Name of Account holder:	NAMIBIAN COMPETITION COMMISSION
Bank Name:	BANK WINDHOEK
Account Number:	8001663543
Branch:	Main Branch
Branch code:	481972
Reference:	2011MAR0014INV

6.4 The penalty will be paid over by the Commission into the State Revenue Fund in accordance with the provisions of section 53(5) of the Act.

7. COURT ORDER

7.1 The Consent Agreement is conditional upon it being confirmed as an order of the Court. Should the Court not confirm the Consent Agreement, all terms of the Consent Agreement shall lapse and have no force and effect and will not be used as evidence against the parties in any proceeding whatsoever.

7.2 Each party will carry its own costs of the application to the Court for confirmation of the Consent Agreement.

8. FULL AND FINAL SETTLEMENT

The Consent Agreement, upon confirmation as an order of the Court, shall be in full and final settlement of the Complaints and shall conclude the proceedings under case number 2011MAR0014INV. This Consent Agreement replaces any previous agreements between the Commission and the Parties.
