

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH SECTION 10A OF THE FINANCIAL
SERVICES BOARD ACT, 97 OF 1990**

CASE NO: **22/2014**

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE Applicant

and

SAXUM INSURANCE LIMITED Respondent

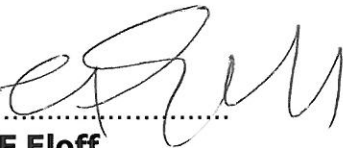
ORDER

WITH DUE CONSIDERATION to the settlement agreement (attached marked annexure "A") in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, I hereby determine that the Respondent contravened section 45 of the Short-Term Insurance Act, No 53 of 1998 (STI Act), read with Regulation 4.1 of the Regulations under STI Act and impose a penalty of R200 000.

The remaining terms and conditions of the settlement agreement are incorporated and made an order of the Enforcement Committee.

I make no order regarding costs.

Signed at **PRETORIA** on the *26*..... day of **February 2015**.



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C F Eloff
Chairperson of the Enforcement Committee

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CASE NO: 22/2014

In the matter of:

THE REGISTRAR OF SHORT-TERM INSURANCE

Applicant

and

SAXUM INSURANCE LIMITED

Respondent

**SETTLEMENT AGREEMENT IN TERMS OF SECTION 6B(7)(a) OF THE
FINANCIAL INSTITUTIONS (PROTECTION OF FUNDS) ACT, NO 28 OF
2001**

1. The parties

- 1.1. The parties to the agreement are the Registrar of Short-term Insurance (“the Registrar”) herein represented by Jonathan Dixon.

- 1.2. Saxum Insurance Limited (“Respondent”) a registered company as contemplated in the Companies Act, No 71 of 2008, (registration number 2004/011845/06). The Respondent is a registered short-term insurer in terms of the Short-term Insurance Act, No 53 of 1998 (“STI Act”), and an authorised financial services provider in terms of

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the Financial Advisory and Intermediary Services Act, No 37 of 2002.

- 1.3. The Respondent is herein represented by Mr Thomas Ohlenschlager ("Mr Ohlenschlager") an adult male businessman with passport number C486M8RPG, in his capacity as Managing Director of the Respondent. Mr Ohlenschlager confirms that he is duly authorised to enter into this agreement.

2. Contravention of section 45 of the STI Act read with Regulation 4.1 of the Regulations under STI Act

- 2.1. It is agreed between the parties that the Respondent contravened section 45 of the STI Act read with Regulation 4.1 in that:

2.1.1. During the period from July 2013 to June 2014 the Respondent permitted 20 independent intermediaries to collect premiums in respect of short-term insurance policies underwritten by the Respondent;

2.1.2. To provide security for the premiums collected, the Respondent issued demand guarantees to the intermediaries; and

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2.1.3. The Respondent was not registered to issue guarantee policies for the purpose of providing security for premiums.

2.2. Section 45 of the STI Act reads as follows:

“No independent intermediary shall receive, hold or in any other manner deal with premiums payable under a short-term policy entered into or to be entered into with a short-term insurer, other than a short-term reinsurance policy, and no such short-term insurer shall permit such independent intermediary to so receive, hold or in any other manner deal with such premiums-

- (a) unless authorised to do so by the short-term insurer concerned as prescribed by regulation; and*
- (b) otherwise than in accordance with regulations.”*

2.3. Regulation 4.1(1) and (2) provides as follows:

- (1) “A short-term insurer may, subject to subregulation (2), in writing authorise an independent intermediary to receive, hold or in any other manner deal with premiums payable to it under short-term policies.*
- (2) A person shall not be authorised, as contemplated in subregulation (1), unless that person has provided security, to the extent and in accordance with the requirements of this Part, in respect of his or her obligations in terms of regulation 4.3 by means of-*
 - (a) A guarantee policy issue by a short-term insurer registered to do so in accordance with guarantee facility created by short term insurers generally for the purpose of providing such security; or*
 - (b) A contract which, but for the fact that the undertaking concerned is given by a bank, would be a guarantee policy...”*

2.4. The demand guarantees issued by the Respondent were not valid for the purpose of providing security under regulation 4.1(2)(a).

2.5. In terms of regulation 4.1(2) the only forms of security that may be provided are a guarantee policy issued by the Intermediaries



Guarantee Facility Ltd (i.e. the only guarantee facility created by short-term insurers generally for the purposes of providing security) or a bank guarantee. Consequently, the Respondent issued invalid guarantees to the intermediaries.

2.6. Therefore, the Respondent contravened section 45 of the STI Act read with Regulation 4.1 of the Regulations under the STI Act.

3. The mitigating circumstances

3.1. It is agreed that the following mitigating circumstances are present in this matter:

3.1.1. The Respondent has accepted responsibility for the contraventions;

3.1.2. The Respondent has rectified the contravention by replacing the invalid guarantees with demand guarantees issued by a bank; and

3.1.3. The Respondent fully cooperated with the Registrar during the enforcement process.

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4. The agreed penalty

- 4.1. In the light of the above, and in terms of section 6B(7)(a) of the Financial Institutions (Protection of Funds) Act, No 28 of 2001, the parties have agreed that the Respondent will pay a penalty of R200 000 (two hundred thousand rand) in settlement of the matter.
- 4.2. The parties humbly request that the Honourable Chairperson makes the settlement an order, as envisaged in section 6B(7)(b) of the Financial Institutions (Protection of Funds) Act.

5. Other conditions

- 5.1. This agreement is subject to approval by the Enforcement Committee and the parties specifically record that they are aware of the possibility that the Enforcement Committee may not accept the terms of this agreement.
- 5.2. If the Respondent does not comply with the terms of this agreement and it is necessary for the FSB to proceed with legal proceedings, the Respondent herewith consents to pay all legal costs to the FSB on the Attorney and Client scale in terms of the High Court Rules inclusive of collection commission and Value Added Tax.

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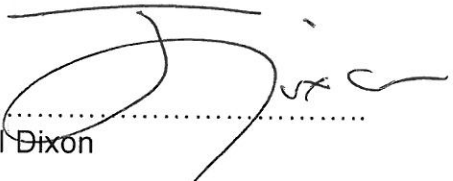
- 5.3. No leniency or postponement given by the FSB to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.
- 5.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 5.5. This Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.
- 5.6. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.
- 5.7. The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination may validly be served upon or delivered to the parties. However the notice contemplated in terms of section 6E of the FI Act may be delivered by electronic email. For the purpose of this agreement the parties' respective addresses shall be:



5.7.1. Financial Services Board
Block B, Riverwalk Office Park
41 Matroosberg Road
Ashlea Gardens ext 6
Pretoria
0081

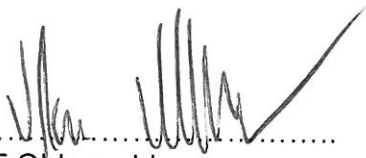
5.7.2. Respondent:
Saxum Insurance Limited
Eton House
15 Eton Road
Parktown
2193
thomas.ohlenschlager@saxuminsurance.com

Signed at **PRETORIA** on *25 February 2015* **JANUARY 2015** on behalf of the Registrar


.....
J I Dixon

.....
Witness

Signed at *Parktown* on *18 February* **JANUARY 2015** on behalf of
Saxum Insurance Limited


.....
Mr T Ohlenschlager


.....
Witness