

**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: **16/2013**

In the matter of:

THE REGISTRAR OF LONG-TERM INSURANCE Applicant

and

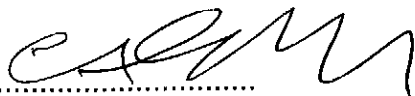
SANLAM DEVELOPING MARKETS LIMITED Respondent

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 49 of the Long-Term Insurance Act, No 52 of 1998 (LTI Act) read with Regulation 3.4 of the Regulations under the LTI Act , and impose a penalty of R2 000 000. 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 ^{26th}..... day of **November 2013**.



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C F Eloff
Chairperson of the Enforcement Committee

**IN THE ENFORCEMENT COMMITTEE ESTABLISHED IN TERMS OF
SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES
BOARD ACT, NO 97 OF 1990**

CASE NO: 16/2013

In the matter of:

THE REGISTRAR OF LONG-TERM INSURANCE Applicant

and

SANLAM DEVELOPING MARKETS 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 Long-term Insurance ("the Registrar") herein represented by Jonathan Dixon; and

1.2. Sanlam Developing Markets Limited ("Respondent") a registered company as contemplated in the Companies Act, No 71 of 2008, (registration number 1911/003818/06). The Respondent is a long-term insurer in terms of the Long-term

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Insurance Act, No 52 of 1998, and an authorised financial services provider in terms of the Financial Advisory and Intermediary Services Act, No 37 of 2002.

1.3. The Respondent is herein represented by Ms Anne Livingstone ("Ms Livingstone") an adult female businesswoman with identity number 7812190031089, in her capacity as a Chief Executive of the Respondent. Ms Livingstone confirms that she is duly authorised to enter into this agreement.

2. Contravention of section 49 of the Long-term Insurance Act (LTI Act) read with Regulation 3.4 of the Regulations under LTI Act

2.1. It is agreed between the parties that the Respondent contravened section 49 of the LTI Act read with Regulation 3.4 in that:

2.1.1. During the period 1 November 2008 to 21 June 2013 the Respondent issued whole life policies to several policyholders. These policies were multiple premium policies (policies under which the premium is payable in two or more amounts) and had premiums which were collected until a particular age rather than a fixed term. As a result, the premium paying term used for commission calculations had to be determined;

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- 2.1.2. The Respondent's administration system erroneously used the age of the primary policyholder in all instances when calculating the premium paying term;
- 2.1.3. In respect of policies where there were components with separately identifiable benefits and premiums, the ages of the life assured for which benefits were provided were not taken into account;
- 2.1.4. Furthermore, the Respondent's administration system assumed that all term benefits ended at life assured age 65. This assumption was incorrect in respect of some policies; and
- 2.1.5. Consequently, the Respondent remunerated intermediaries in excess of the maximum commission as set out in the Part 3 of the Regulations under LTI Act.
- 2.2. Section 49 of the LTI Act reads as follows:

"No consideration shall be offered or provided by a long-term insurer or a person on behalf of the long-term insurer or accepted by any independent intermediary for rendering services as intermediary as referred to in the regulations, other than commission or remuneration contemplated in the regulations and otherwise than in accordance with the regulations."

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2.3. Part 3 of the Regulations under LTI Act provides for the maximum commission payable to intermediaries. Regulation 3.4 specifically sets out the maximum commission payable in respect of multiple premium policies.

2.4. The Respondent has admitted that, as a result of the incorrect calculations by its administration system, it paid commission to intermediaries which exceeded the legislated commission.

2.5. Therefore, the Respondent contravened section 49 of the LTI Act read with Regulation 3.4 of the Regulations under the LTI 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 contravention;

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- 3.1.2. The contravention was the result of a system error and there was no deliberate intention, on the part of the respondent, to contravene;

- 3.1.3. The Respondent addressed all the compliance issues relating to this matter and amended its processes where required;

- 3.1.4. The Respondent fully cooperated with the Registrar and displayed a sincere intention to comply; and

- 3.1.5. The Respondent has been open and transparent in its dealings with the Registrar and has made full disclosure of its processes, procedure and practices.

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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 R2 000 000 (two million 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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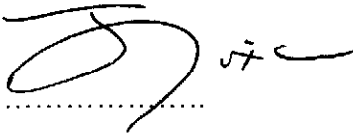
5.3. No leniency or postponement given by the FSB to the Respondent or any amendment to the terms and conditions of this agreement will be binding unless such postponement, leniency or amendment is reduced to writing and signed by the parties.

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.

Signed at **PRETORIA** on ..20th... **NOVEMBER 2013** on behalf of the Registrar


.....
J I Dixon


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Witness



Signed at HOUGHTON on 25 **NOVEMBER 2013** on
behalf of Sanlam Developing Markets Limited


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Ms A Livingstone


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Witness

