

**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: **12/2014**

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 the following:

- Section 45 of the Short-Term Insurance Act, No 53 of 1998(STI Act), read with Regulation 4.1 (1) of the Regulations under STI Act;
- Regulation 4.3(3) of the Regulations under STI Act; and
- Rule 7.4(c) (iv) read with subsections (g) and (h) of the Policyholders Protection Rules.

and impose a penalty of R75 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 ...³¹... day of **July 2014**.

.....
C F Eloff

Chairperson of the Enforcement Committee

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SECTION 10(3), READ WITH 10A OF THE FINANCIAL SERVICES BOARD
ACT, NO 97 OF 1990**

CASE NO: 12/2014

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;
and

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, 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 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. It is noted that whilst Mr. Ohlenschlager is the Respondent's representative, he was not the Managing Director of saXum Insurance Limited at the time of said contraventions.

2. Contravention of section 45 of the Short-term Insurance Act (STI Act) read with Regulation 4.1(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(1) in that:

2.1.1. During the period from October 2012 to February 2013 Fulcrum Group (Pty) Ltd (Fulcrum) collected premiums in respect of short-term insurance policies underwritten by the Respondent;



2.1.2. Fulcrum remitted said premiums to the Respondent's bank account and the Respondent accepted the premiums into its bank account; and

2.1.3. The Respondent did not authorise Fulcrum in writing to collect premiums on its behalf.

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) provides as follows:

"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."

2.4. The Respondent never authorised Fulcrum, in writing, to collect premiums on its behalf; however Fulcrum collected premiums from October 2012 to February 2013 and remitted said premiums into the Respondent's bank account. Despite lack of written authority, the Respondent permitted Fulcrum to collect premiums and accepted the premiums into its bank account.

2.5. Therefore, the Respondent contravened section 45 of the STI Act read with Regulation 4.1(1) of the Regulations under the STI Act.

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3. **Contravention of Regulation 4.3(3) of the Regulations under STI Act**

- 3.1. On 5 June 2012 the Respondent and Impac Underwriting Managers (Pty) Limited (Impac) entered into an underwriting manager's agreement. In terms of the agreement, the Respondent authorised Impac to collect premiums relating to short-term insurance policies issued by the Respondent to policyholders.
- 3.2. The Respondent also granted Impac authority to authorise accredited brokers to collect premiums due in terms of policies issued to policyholders.
- 3.3. The Respondent's business arrangement with Impac was such that motor dealers with IGF guarantees collected short-term personal lines premiums from policyholders and remitted same to Impac's bank account. In turn Impac remitted the collected premiums to the Respondent.
- 3.4. Consequently, two entities (i.e. the motor dealer and Impac) received premiums in respect of the same short-term personal lines insurance policies.
- 3.5. Regulation 4.3(3) reads as follows:



"A short term insurer shall not authorise more than one person as contemplated in subregulation(2) to receive a premium in relation to the same policy if it is a policy forming part of personal lines business."

3.6. Therefore, the Respondent contravened section 45 of the STI Act read with Regulation 4.3(3) of the Regulations under the STI Act.

4. Contravention of Rule 7.4(c)(iv) read with subsections (g) and (h) of the Protection of Policyholders Rules (PPRs)

4.1. It is agreed between the parties that the Respondent contravened rule 7.4(c)(iv) of the PPRs read with subsections (g) and (h), as set out below, from 1 January 2011 to 20 August 2013.

4.2. When rejecting policyholder claims, the Respondent informed policyholders that they have 90 days from the date of the claim rejection letter to make representations in respect the rejected claim, and that they have 90 days from the date of the claim rejection letter to institute legal proceedings failing which the claim will have become prescribed in terms of the policy wording.

4.3. Rule 7.4(b) of the PPRs provides that an insurer must within 10 days of taking a decision to reject a claim notify the policyholder of its decision.

4.4. Rule 7.4(c)(ii) of the PPRs provides that where an insurer rejects a claim, it must inform the policyholder that the policyholder may



within a period of not less than 90 days after the date of receipt of the notice in terms of rule 7.4(b) make representations to the insurer in respect of the decision.

4.5. Rule 7.4(c)(iv) of the PPRs provides that in the event that the relevant policy contains a time limitation provision for the institutions of legal action, the insurer must inform the policyholder of that provision and the implications thereof in an easily understood manner.

4.6. Rule 7.4(g) and (h) of the PPRs provide that any limitation provision for the institution of legal action may not include the period referred to in subsection (c)(ii) for the calculation of the time limitation period.

4.7. Therefore, the Respondent contravened rule 7.4(c)(iv) of the PPRs read with subsections (g) and (h) in that the time limitation afforded to policyholders for instituting legal action did not exclude the time limitation in which such policyholders may make representations to the Respondent in respect of the Respondent's decision to reject the policyholders' claims.

5. The mitigating circumstances

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



5.1.1. The Respondent has accepted responsibility for the contraventions;

5.1.2. The Respondent has rectified the majority of the contraventions; and

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

6. The agreed penalty

6.1. 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 R75 000 (seventy five thousand rand) in settlement of the matter.

6.2. 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.

7. Other conditions



- 7.1. 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.
- 7.2. 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.
- 7.3. 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.
- 7.4. Any receipt of a payment by the FSB after the due date shall be without prejudice to any of the rights of the FSB.
- 7.5. This Agreement shall not be a novation of the cause of action in terms whereof the Respondent was found to have contravened the Act.



7.6. This agreement constitutes the whole agreement between the parties in respect of the offer to pay a penalty.

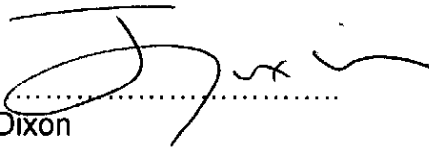
7.7. The parties choose as their *domicillum citandi et executandi* their respective address set out below for all purposes arising out of or in connection with this agreement at which addresses all the processes and notices arising out of or in connection with this agreement, its breach or termination 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:

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

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

Signed at PRETORIA on ... 30th JULY 2014 on behalf of the Registrar

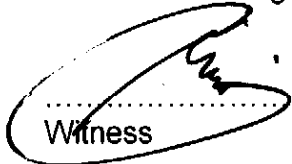



.....
J I Dixon

.....
Witness

Signed at Parktown on 21 JULY 2014 on behalf of Saxum
Insurance Limited


.....
Mr T Ohlenschlager


.....
Witness