NASIA PUBLICATION:

MULTIPLE CESSION OF INSURANCE POLICIES

APRIL 2021

The discussion that will follow for this topic is based on the following circulars issued in November 2020 by Bank of Namibia (BoN) and NAMFISA:

- No.: 1/20 – BIA – Multiple Cession of Life Covers
- No. I/LTI/02/2020) – Multiple Cession of Insurance Policies

2020 – THE OLD PRACTICE REGARDING INSURANCE POLICIES:

NAMFISA and BoN as regulators of Non-Banking and Banking institutions have observed a practice of policyholders having multiple insurance policies. These policies serve as security for multiple banking facilities (e.g., mortgage bonds, overdrafts etc.) offered by different banking institutions, despite the fact that in most cases the value of one policy is sufficient to serve as security for multiple banking facilities acquired by the policyholder.

In the past, each Banking Institution required that the original policy document be deposited with it for the duration of the loan period. Thus, multiple cessions of insurance policies were not allowable to be registered against a single insurance policy.

NAMFISA and BoN expressed their concerns about this practice as it forced policyholders to take out multiple insurance policies and hence exposes policyholders to the risk of over-insurance. Over-insurance places an unnecessary financial burden on the policyholders in addition to their repayment duties owed to the banks.

THE CURRENT LAW

LONG TERM INSURANCE & SHORT-TERM INSURANCE ACT

According to Section 25 of the Long-Term Insurance Act & Section 25 of the Short-Term Insurance Act, every registered insurer and reinsurer is required to carry on business in good faith and to employ sound insurance practices and methods. Insurance brokers also have a duty to negotiate on their client's behalf and to act in their client's best interest. In addition to these duties of insurers and brokers, insurers and brokers also have a duty to explain the possibility and consequences to policyholders of being over-insured or under-insured. It should also be ensured that a policy holder's insurance cover is **necessary, sufficient and relevant.**

PREVIOUS DIRECTIVES ISSUED BY NAMFISA

In addition to the above mentioned, Directive I/STI/03/2015 & LTI/03/2015 also directs all insurers & brokers to establish mechanisms to prevent under-insurance and over-insurance within the insurance industry. The measures must include but are not limited to the following:

1. Avoiding duplication of insurance coverage by ensuring that a certain risk/asset is not already sufficiently covered under another policy.
2. Explaining the possibility & consequences to policyholders of being over-insured & under-insured.

2021 - THE GOOD NEWS FOR THE PRACTICE GOING FORWARD: NEW SERVICE AVAILABLE TO CUSTOMERS

After Namfisa and BoN consulted with the industry, the majority of the insurers and banking institutions committed to change their systems to enable the sharing of information to enable multiple cessions to be registered against one insurance policy. The insurers and banking institutions also recently confirmed that most of their systems have indeed been upgraded to make multiple cessions of insurance policies possible.

To cede (transfer) a policy means you surrender your policy over to a lender (for the period of the loan agreement). If you fail to pay your loan to the lender, the insurance policy (i.e. all or part of the value insured) can settle your loan should an insured event (i.e., death or disability) take place.

A policy cession thus takes place when someone (called the "cedent") **transfer** their personal right to a claim to another (the "cessionary"). Should a claim arise, the insurer will pay the benefits of the policy to the cessionary **instead of the cedent** (as the cedent transferred their rights).

It is thus now possible to cede (transfer) one policy to **multiple/more than one** lender. This new practice will minimize the impact on customer cash flows by reducing the number of insurance policies per customer.

BoN and NAMFISA requested all insurers, brokers and agents to ensure that policyholders are not over or under-insured and that their customers should be informed about the availability of this new service.

Insurers and banking institutions are given until 30 June 2021 to ensure that their systems are fully compatible to allow for multiple cessions.

PRACTICE IN THE REGION:

South Africa

In South Africa, insurance activities were regulated by the Financial Services Board (FSB). This was replaced by the Financial Sector Conduct Authority (FSCA) in 2018 which is now responsible for market conduct regulation and supervision. Under the new Insurance Act of 2017, a life insurance policy is defined as *an arrangement that an individual agrees to, in exchange for payment premium to provide a benefit on the happening of a life, health, disability or death event (excluding the bank deposits and* *collective investment schemes).* A non-life insurance policy on the other hand is defined as *an arrangement which an individual agree to, in exchange for the payment of premium to provide for the indemnity benefit happening during an unknown period or an unplanned circumstance.*

Some insurance covers found in South Africa include joint term life insurance, whole life/permanent insurance and universal life insurance, among others. Multiple insurance policy cessions are not exactly governed by the Short-Term and Long-Term insurance Acts and there is no specific limit to the number of life cover policies that an individual should hold in South Africa hence most insurers choose to pay only a certain number of policies on the life of an individual. For example, if a policy holder dies and leaves behind an insurance policy for the dependents with insurer X and Y, an insurer may pay up to a certain amount. In some instances, an insurer may reject an insurance claim on the premise of over insurance. This normally happens when the amount secured by the various policies exceeds the full indemnity.

Botswana

In Botswana, insurance activities are regulated by the Non-Bank Financial Institutions Regulatory Authority (NBFIRA) under the Insurance industry Act 2015. The Act is a composite piece of legislation dealing with the licencing requirements and regulation of all insurers, including reinsurers and insurance brokers, agents and representatives operating in Botswana. Under short-term insurance (non-life insurance), a compensation is provided for by an insurance company as compensation for losses on insured items suffered. Under long-term insurance (life-insurance), when the insured dies, a compensation is provided for by the insurer to a nominated beneficiary.

Despite any contract provisions in the policy or in any agreement relating to the policy, the policyholder of a policy issued by a Botswana insurer would be entitled to enforce the rights under the policy against the insurer in any court in Botswana. The insurance industry Act, 2015 does not however make any emphasis on multiple cessions of insurance policies, but highlights that a policy provided by an insurer can be suspended until the insurer is provided with an undertaking by the insured. An individual may renew his/ her policy if he/she has received an invitation for the renewal of any policy by the insurer.

Kenya

Insurance activities in Kenya are regulated by the Insurance Regulatory Authority. The Insurance Regulatory Authority is a statutory government agency established under the Insurance (Amendment) Act, 2006. The Insurance Act Cap 487 makes provisions for insurance industry regulations and its accompanying Schedules. Some insurance covers in Kenya include: Term assurance, endowment, whole life, unit linked/investment insurance policies and funeral insurance cover.

Multiple insurance policy is not a much talked about practice in Kenya since the insurance Act Cap 487 requires that each insurer should be in a position of a policy document which should outline a type (single policy) that an individual should hold, the name of the insured, the event in which such benefits should be paid, duration of that cover, as well as the frequency at which the amount should be paid.

Mauritius

Insurance regulation and supervision in Mauritius is carried out by the Financial Services Commission, which is also responsible for the administration of the Insurance Act 2005 and the Financial Services Act 2007. The Insurance Act 2005 characterizes insurance businesses as: Long-term insurance businesses which comprises of linked long-term insurance and life insurance businesses; and General insurance businesses which comprises of accident and health related insurance businesses.

Some insurance covers found in Mauritius include cash back plan, endowment and smart loan cover. Multiple insurance policy cession is also not a much talked about practice in Mauritius. The general law in Mauritius requires that a contract should be in place to serve as legal agreement between the insured and the insurer. Whether an individual takes up multiple life covers, that can depend on what is agreed upon between the insurer and the insured.

Conclusion

Insurance policies differ in different countries as each country subscribes to their own regulations which can change from time to time. It is very important that a policyholder's insurance policy remains **necessary, sufficient and relevant.** Therefore, in countries where such practices prevail, insurers and brokers have a duty to explain to policy holders the possibility and consequences of being over-insured or under-insured.