



## INSURANCE COMMISSIONER

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PORT MORESBY  
PAPUA NEW GUINEA

Circular IC-96BRKR/0204.

### COMMENTARY REGARDING LEGISLATIVE PROTECTION OF INSURANCE MARKET IN PAPUA NEW GUINEA - SPECIFIC PRECLUSION OF FOREIGN BROKERS.

The law in Papua New Guinea relating to insurance is clear and is determined by the Insurance Act 1995. Quite simply, that Act provides that -

- \* any risks in Papua New Guinea for which insurance is required can only be placed through local licensed brokers or insurers.

The clear objectives of the legislation are to -

1. protect the interests of insurance consumers within the country in respect of their dealings with the insurance industry;
  2. facilitate the retention of premium within the local economy; and
  3. support the local insurance market through protection of licensed insurers and licensed brokers.
- \* Every person, including foreign companies, residing or having business interests in this country, are required to comply in all respects with the laws of this country;

Insofar as insurance of risks within Papua New Guinea is concerned, that insurance can only be managed within the local insurance industry. Brokers outside of Papua New Guinea acting for clients having multinational or global interests have no rights and cannot act as a broker in respect of the Papua New Guinea risks. Alternative contractual arrangements purporting, for example, to provide a global or regional insurance solution, cannot encompass insurance of risks in Papua New Guinea. The test is simply whether the risk was, at the material time, situated in Papua New Guinea. The definition of "risk", for the purposes of the Act, includes financial risk.

## ATTACHMENT "A"

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### Legislative Protection of PNG Insurance Market - Preclusion of Foreign Brokers

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An exemption may be obtained from the Insurance Commissioner for placement off-shore of individual risks under very specific and tightly defined criteria, but this exemption provision is clearly intended to provide for exceptional cases, such as where the local industry has no capacity to handle the specific risk. The exemption applies only to the particular risk.

The legislation ensures that there is no place for the involvement of a foreign broker whatsoever in the management of insurance risks in this country, with the sole exception that a licensed broker here may seek technical assistance, but may not take directions, from an appropriate specialist. These requirements of the Act also apply equally to the parent or shareholder interests of brokers licensed in Papua New Guinea as a separate legal entity.

There are no circumstances in which a client may deal directly with a broker who is not licensed in this country, in respect of risks situated in this country, irrespective of where that client's administration is located. The client cannot elect to place insurance through channels outside of Papua New Guinea. Foreign brokers tempted to act in respect of risks situated in Papua New Guinea are advised to seriously consider their professional responsibilities to their clients and to their professional indemnity insurers.

The consequences of a breach of the legislation are serious:-

1. Any insurance contracts entered into which do not conform in all respects to the requirements of the Act, are illegal, and cannot be enforced through the Courts;
2. The licence of any licensed broker or licensed insurer involved in facilitating a breach of these provisions of the Act (for example by assisting or acting as agent for a foreign broker), will be subject to cancellation;
3. Any person involved in breaching these provisions of the Act (including the client) are subject to prosecution and severe financial penalties (a fine of up to K50,000, or the value of the premium if that is greater).

Any involvement of a foreign broker in respect of insurance of risks in this country will be viewed as a *prima facie* breach of the Insurance Act. Similarly, any visit from staff of a foreign broker involving direct contact, for whatever reason, with clients in Papua New Guinea, will be regarded in the same way. Where evidence of a breach of the requirements of the Act is established, action will be taken to prosecute the client in Papua New Guinea, and the client will be encouraged to pursue action against any other party involved (ie broker, agent, etc).

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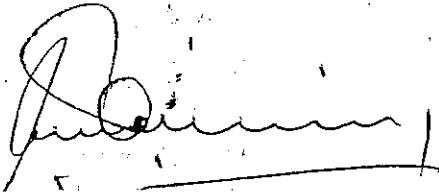
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*Legislative Protection of PNG Insurance Market - Preclusion of Foreign Brokers*

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There appears to be a prevailing perception, particularly by some Australian broking interests, that the provisions of the Insurance Act can be avoided by managing and placing the insurance business directly off-shore; it should be clearly understood such an attitude is irresponsible and a serious detriment to the client, who risks prosecution and having insurance claims refused because of illegality. A client affected by such actions would have a right of action for fraud or negligence against a broker or insurer who acts contrary to the requirements of the Act and this Office will actively encourage such clients to proceed accordingly against the parties involved.

Any enquiries should be addressed to-  
Insurance Commissioner, PO Box 122, Port Moresby, Papua New Guinea,  
or by telephone (675) 3213355, or facsimile (675) 321-4801.



William Hanning MBA FIINZ  
Insurance Commissioner.

2 April 1996.