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## **LEGAL UPDATE 7/2010**

### **INSURABLE INTEREST: UMBRELLA AND GROUP INSURANCE SCHEMES**

We are often requested to quote on schemes where there is no sufficient relationship between the entity wishing to set up the scheme and the employers for whom the scheme is being set up. As an example a broker may want to set up an umbrella scheme to provide benefits for multiple clients through an insurance policy issued to the brokerage. Momentum is not in a position to quote or provide insurance cover due to the absence of insurable interest between the broker and the client.

In other cases several employers are members of an organisation and the organisation wishes to set up an umbrella scheme to provide insurance benefits for its members. Momentum will not be in a position to quote on the business, as it does not meet the criteria discussed below.

Momentum will be able to provide cover in respect of employers who are subsidiaries of a principal employer. Momentum will not cover groups of employers who are affiliated to a particular organisation by virtue of membership.

When dealing with "umbrella" arrangements Momentum has to ensure that a legitimate insurable interest exists and that there is no facilitation of pooling what is essentially a collection of "individual life policies" for the benefit of the broker or organisation wishing to set up a scheme.

The employer or organisation that is insured as the policyholder must have an obligation (such as in terms of the employment contract) to the end member insured under the policy. If there is no obligation then there is no insurable interest. There has to be a link (or causal nexus) between the policyholder and the object to be insured. In addition there are other legal consequences that flow from this arrangement, which require consideration. In terms of section 7(1) of the Long-term Insurance Act no person is allowed to carry on any kind of long term insurance unless that person is registered or deemed to be registered as a long term insurer.

In terms of section 7(3) a person will be deemed to be carrying on long term insurance business in the Republic, if that person performs any act in the Republic, the object of which is that another person "will enter into or enters into, or offers to enter into or to vary, a long term policy,.....in terms of which the first mentioned person undertakes to provide policy benefits to the other person."

In Momentum's view any organisation which wants to insure and provide insurance benefits to multiple employers will be required to register as a long term insurer.

In addition, such an organisation will be required to register as a financial services provider in terms of the Financial Advisory and Intermediary Services Act (FAIS). In terms of FAIS, the organisation will be regarded as giving advice to all the different employers, as well as providing an intermediary service (collection of premiums and submitting to insurer). In

order to be registered, the organisation must meet the requirements of the application process, as well as the fit and proper requirements in terms of FAIS.

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