

2003-11-03

TO ALL BANKS, BRANCHES OF FOREIGN BANKS AND MUTUAL BANKS

BANKS ACT CIRCULAR 13/2003

SECTION 44 OF THE LONG-TERM INSURANCE ACT, 1998 (ACT NO. 52 OF 1998)

EXECUTIVE SUMMARY

It has come to the attention of this Office that some banking institutions appear not to comply with the provisions of section 44 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998 - "the Long-Term Insurance Act"), if a bank requires a policy as security for a loan.

In order to maintain a level-playing field within the industry, this Office wishes to remind banks, branches of foreign banks and mutual banks that the provisions of the Long-Term Insurance Act apply to all parties contracting for loans, including banking institutions.

1. DISCUSSION

It has recently come to the attention of this Office that some banking institutions appear not to comply with the provisions of section 44 of the Long-Term Insurance Act. In order to maintain a level playing-field in the industry, this Office deems it necessary to remind all banks, branches of foreign banks and mutual banks that the provisions of section 44 of the Long-Term Insurance Act apply to all parties contracting for loans, including banking institutions.

In accordance with section 44(a) of the Long-Term Insurance Act, if a party to a contract in terms of which money is loaned, goods are leased or credit is granted, requires, that a long-term policy or its policy benefits be made available and used for the purpose of protecting the interests of a creditor, the person who is so required to make that policy or those policy benefits available shall be

entitled, and shall be given prior written notification of that entitlement, to a choice as to whether he or she wishes to enter into a new policy and make it available for that purpose, or wishes to make available an existing policy of the appropriate value for that purpose, or wishes to utilise a combination of those options.

Please note that section 44(10)(b) further provides that if a new policy is entered into, the debtor is entitled to a free choice as to the long-term insurer with which the policy is entered into and as to the intermediary (if any) who is to render services contemplated in section 49 of the Act, in connection with the transaction.

In order to maintain a level playing field within the industry, this Office wishes to remind banks, branches of foreign banks and mutual banks that the provisions of the Long-Term Insurance Act apply to all parties contracting for loans, including banking institutions.

You are therefore, urged to take cognisance of the provisions of section 44 of the Long-Term Insurance Act in concluding loan agreements.

2. ACKNOWLEDGEMENT OF RECEIPT

Two additional copies of this circular are enclosed for the use of institution's independent auditors. The attached acknowledgement of receipt, duly completed and signed by both the chief executive of the institution and the said auditors, should be returned to this Office at the earliest convenience of the aforementioned signatories.



E M Kruger
Registrar of Banks

The previous circular issued was Banks Act Circular 12/2003, dated 28 August 2003.