DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION

NO. 971 **1 October 2021**

COMPETITION COMMISSION

NOTIFICATION TO APPROVE WITH CONDITIONS THE TRANSACTION INVOLVING:

SANLAM LIFE INSURANCE LIMITED

AND

AFRICAN RAINBOW LIFE LIMITED

CASE NUMBER: 2020DEC0060

The Competition Commission hereby gives notice, in terms of Rule 38 (3)(c) of the 'Rules for the Conduct of Proceedings in the Competition Commission', that it has approved the transaction involving the above-mentioned firms subject to conditions as set out below:

1. On 21 December 2020, the Competition Commission ("the Commission") received notice of an intermediate merger whereby Sanlam Life Insurance Limited ("Sanlam Life") intends to increase its shareholding in African Rainbow Life Limited ("African Rainbow Life") from 51% to 100%, through acquiring the remaining 49% of the issued share capital of African Rainbow Life from African Rainbow Capital Financial Services Holdings (Pty) Ltd ("ARC FS") and Siyakhula Finance Holdings (Pty) Ltd and Siyakhula Investment Holdings (Pty) Ltd ("the Siyakhula Consortium"). Upon the implementation of the proposed transaction, Sanlam Life will own the entire issued share capital of African Rainbow Life and exercise sole control over African Rainbow Life as envisaged by section 12(2)(a) of the Competition Act 89 of 1998, as amended ("Act").

The parties and their activities

2. The primary acquiring firm is Sanlam Life, a company incorporated in accordance with the laws of the Republic of South Africa. Sanlam Life is a wholly owned subsidiary of Sanlam

Limited ("Sanlam"), a public company listed on the Johannesburg Stock Exchange, A2X and Namibian Stock Exchanges, and is accordingly not controlled by any shareholder. The largest beneficial shareholders of Sanlam (i.e., those with more than a 5% interest) are as follows:

2.1. Ubuntu-Botho Investments (Pty) Ltd ("Ubuntu-Botho Investments") 12,48%
2.2. Government Employees Pension Fund (GEPF) 11,96%
2.3. SU BEE Investments (RF) (Pty) Ltd ("SU BEE Investments") 5.00%

3. Sanlam is a diversified financial services group that operates across the African continent, India, Malaysia and various other countries. Sanlam operates through a number of subsidiaries such as Sanlam Sky (which comprises a combination of two Sanlam businesses, namely Safrican Insurance Company Limited ("Safrican") and Sanlam Developing Markets Limited), associated companies and joint ventures. Sanlam Life is the largest operating subsidiary and the holding company of most of Sanlam's operations in emerging markets. Sanlam has a decentralised management structure and conducts operations through four business clusters that deliver financial solutions to individual and institutional clients across all market segments. Sanlam's areas of expertise include insurance (life and general), financial planning, retirement, investments and wealth.

4. The primary target firm is African Rainbow Life, a company incorporated in accordance with the laws of the Republic of South Africa. Currently African Rainbow Life is jointly controlled by Sanlam Life (51%), ARC FS (26%) and the Siyakhula Consortium (23%). In turn, ARC FS is ultimately controlled by Ubuntu-Botho Investments (Pty) Ltd.

5. African Rainbow Life is a new entrant established by Sanlam Life in conjunction with its co-shareholders which commenced operations in August 2019. African Rainbow Life provides life insurance, endowment plans, funeral cover and group risk solutions which are aimed at lower income customers (the low to middle income segment). In essence, it provides clients with various long-term insurance products.

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Competition assessment

6. The Commission considered the activities of the merging parties and found that the proposed transaction results in a horizontal overlap in the broad market for the provision of long-term insurance products. The Commission notes that the merged entity will have an estimated market share of less than 15%. The Commission notes that there are various players active in the market for the provision of long-term insurance products in South Africa. The Commission is therefore of the view that the merged entity will continue to be constrained by firms such as, *inter alia*, Assupol, Avbob, Doves, Old Mutual, Liberty, Momentum (MMI) and Discovery who will continue to impose a competitive constraint on the merged entity post-merger. In addition to these traditional insurance firms, the merged entity will also face significant competition from the major financial institutions such as First National Bank, Absa, Standard Bank, and Nedbank. There are also several other competitors such as OUTsurance, Dial Direct and many others which also provide long term insurance related products. As such, the Commission is of the view that there are numerous significant players who are active in the long-term insurance products market in South Africa.

7. Further, the Commission notes that the proposed transaction will not change the structure of the market, as Sanlam Life already jointly controls African Rainbow Life and the proposed transaction results only in a move from a joint to sole control.

8. Given the presence of alternative players in the market and the relatively low market share accretion, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in the broad market for the provision of long-term insurance products.

9. The Commission found that the proposed transaction is unlikely to raise any negative vertical effects post-merger.

10. Taken as a whole, the Commission is of the view that the proposed transaction is unlikely to substantially prevent or lessen competition in any market in South Africa.

Public Interest

Effect of the merger on employment

11. The employees of the Sanlam Life and African Rainbow Life are both represented by employee representatives. The Commission engaged the relevant employee representatives and both employee representatives confirmed that the employees were made aware of the proposed transaction and no employee raised any concerns with the proposed transaction.

12. The Commission notes that given the minor overlap between the activities of Sanlam and African Rainbow Life and Sanlam's role as a significant shareholder in African Rainbow Life, the merging parties anticipate that the proposed transaction will ensure the sustainability of African Rainbow Life and that it will result in an increase in employment at African Rainbow Life in the near future. Despite the intended employment increase, the merging parties have disclosed that there may potentially be duplication in relation to certain executive and back-office functions between Safrican and African Rainbow Life, post-merger. The merging parties have identified a number of positions that could potentially be affected by retrenchments due to duplications after 2 years of the implementation of the proposed transaction, which include executive committee, operations, administration, facilities, IT and Support functions.

13. The Commission notes that the merging parties are only likely to retrench after 2 years from the implementation of the proposed transaction. To this end, the merging parties have provided an undertaking that it will not affect any involuntary merger specific retrenchments to eliminate potential duplicative positions for a period of 2 years following the implementation of the proposed transaction. Further to that, the merging parties submit that in the event that the South African economy recovers from the global COVID-19 pandemic, the need for any duplicative retrenchments will fall away and that the reduction in potential duplicative positions will be outweighed by increases in employment in African Rainbow Life.

14. Considering the above, the Commission finds that it is likely that the proposed transaction will have negative effect on employment in that the merging parties have disclosed that

there may be retrenchments of a number of employees 2 years after the implementation of the proposed transaction. The Commission notes that this effect on employment is merger specific as the merging parties have indicated that the anticipated retrenchments are occasioned by duplications between Sanlam Life and African Rainbow Life.

15. The Commission notes the undertaking made by the merging parties and is of the view that the undertaking should be made a condition to the proposed transaction to ensure that there are no merger-specific retrenchments for a period of at least 2 years post the implementation date. Given that the merging parties anticipate an increase in employment in the near future within African Rainbow Life, the Commission is of the view that should there be any retrenchments after the 2-year period, the retrenched employees should be given first preference should suitable positions become available within Sanlam Life or any of the subsidiaries within the Sanlam Group in South Africa. The Commission engaged the merging parties in this regard and the merging parties agreed to the conditions proposed by the Commission.

16. In light of the above, the Commission is of the view that the proposed transaction is likely to have an impact on employment and the remedy proposed is likely to mitigate the impact of the proposed transaction on employment.

17. In addition, the proposed transaction does not raise any other public interest concerns.

Conclusion

18. The Commission therefore approves the proposed transaction with the conditions attached as Annexure **"A"** to this report.

ANNEXURE A

SANLAM LIFE INSURANCE LIMITED

AND

AFRICAN RAINBOW LIFE LIMITED

CASE NUMBER: 2020DEC0060

CONDITIONS

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1. **DEFINITIONS**

1.1. The following expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings:-

1.1.1. "**Acquiring Firm**" means Sanlam Life Insurance Limited;

1.1.2. "**Affected Employees**" means employees employed at African Rainbow Life that are likely to be retrenched post-merger;

1.1.3. "**African Rainbow Life"** means African Rainbow Life Limited;

1.1.4. "**Approval Date**" means the date on which the Merger is approved by the Commission and as set out in the Commission's clearance certificate (Notice CC 15);

1.1.5. "**Commission**" means the Competition Commission of South Africa;

1.1.6. "**Conditions**" means the conditions set out herein;

1.1.7. "**Days**" means any calendar day which is not a Saturday, Sunday or an official holiday in South Africa;

1.1.8. **"DTIC"** means Department of Trade, Industry and Competition;

1.1.9. "**Implementation Date**" means the date, occurring after the Approval Date, on which the Merger is implemented by the Merging Parties;

1.1.10. **"Merged Entity"** means Sanlam Life and African Rainbow Life;

1.1.11. "**Merger**" means the acquisition of control by the Acquiring Firm over the Target Firm;

1.1.12. "**Merging Parties**" means Sanlam Life and African Rainbow Life;

1.1.13. **"Moratorium Period"** means a period of 2 (two) years from the Implementation Date;

1.1.14. "**Sanlam Life"** means Sanlam Life Insurance Limited;

1.1.15. "**Target Firm**" means African Rainbow Life Limited;

1.1.16. "**Tribunal**" means the Competition Tribunal of South Africa.

2. **RECORDAL**

2.1. On 21 December 2020, the Merging Parties notified an intermediate Merger to the Commission wherein Sanlam Life intends to acquire sole control over African Rainbow Life. Following its investigation of the Merger, the Commission concluded that the Merger is unlikely to substantially prevent or lessen competition in any relevant market.

2.2. However, the Commission found that the Merger may result in the retrenchment of several employees due to a duplication of roles within the Merged Entity after a period of 2 years from the implementation of the Merger. In this regard, the Merging Parties have indicated that they may have to retrench certain executive and back-office functions between the Acquiring Firm and the Target Firm, as these are the roles affected by duplications.

2.3. In order to address the employment concerns identified by the Commission, the Merger is approved subject to these Conditions, which the Merging Parties have agreed to.

3. **CONDITIONS**

3.1. The Merged Entity shall not retrench the Affected Employees as a result of the Merger for the duration of the Moratorium Period.

3.2. Should the Merged Entity retrench the Affected Employees at the expiry of the Moratorium Period, the Merged Entity shall give the first right to an interview to such Affected Employees for any employment opportunities that may arise within the Merged Entity for which an Affected Employee/s is qualified. This obligation is for a period of one year after the date on which the Moratorium Period ends.

3.3. For the sake of clarity, retrenched employees do not include (i) voluntary retrenchment and/or voluntary separation arrangements; (ii) voluntary early retirement packages; (iii) unreasonable refusals to be redeployed in accordance with the provisions of the Labour Relations Act; (iv) resignations or retirements in the ordinary course of business; (v) retrenchments lawfully effected for operational requirements unrelated to the Merger; (vi) terminations in the ordinary course of business, including but not limited to, dismissals as a result of misconduct or poor performance; and (vii) any decision not to renew or extend a contract of a contract worker.

4. **MONITORING OF COMPLIANCE WITH THE CONDITIONS**

4.1. The Merged Entity shall inform the Commission in writing of the Implementation Date within 5 (five) Days of it becoming effective.

4.2. The Merging Parties shall circulate a copy of the Conditions to their employees and or their respective representatives including the relevant trade unions within 5 Days of the Approval Date.

4.3. As proof of compliance thereof, the Merging Parties shall within 10 Days of circulating the Conditions, provide the Commission with an affidavit by a director employed by each of the Merging Patties attesting to the circulation of the Conditions and attach a copy of the notice sent.

4.4. The Merged Entity shall submit an affidavit within 5 Days after the anniversary of the Implementation Date and for a period of 3 years, to the Commission and the DTIC, confirming compliance with clause 3 of the Conditions. This affidavit must be deposed to by a director of the Merged Entity.

4.5. Any employee of either of the Parties who believes that the Merging Parties have not complied with or have acted in breach of the Conditions may approach the Commission.

4.6. In the event that the Commission discovers that there has been an apparent breach of these Conditions, this shall be dealt with in terms of Rule 37 of the Rules for the Conduct of Proceedings in the Competition Tribunal read together with Rule 39 of the Rules for the Conduct of Proceedings in the Competition Commission.

5. VARIATION

5.1. The Merged Entity may at any time, and on good cause shown, apply to the Commission for any of the Conditions to be waived, relaxed, modified and/or substituted. Should a dispute arise in relation to the Merged Entity's application to the Commission, the Merged Entity may apply to the Tribunal for appropriate relief.

6. **GENERAL**

6.1. All correspondence in relation to these Conditions must be submitted to the following e-mail address: mergerconditions@compcom.co.za and ministry@thedtic.gov.za.

Enquiries in this regard may be addressed to Manager: Mergers and Acquisitions Division at Private Bag X23, Lynnwood Ridge, 0040. Telephone: (012) 394 3298