



**RULES AND REGULATIONS FOR INSURANCE
AND REINSURANCE COMPANIES IN BHUTAN
2018**

Royal Monetary Authority of Bhutan

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PART 1 – PRELIMINARY

1. These Rules and Regulations are issued in pursuant to Section 202 of the Financial Services Act of Bhutan 2011, and shall be read in conjunction with the additional requirements under the Financial Services Act 2011.

TITLE AND COMMENCEMENT AND APPLICATION

2.1 These Rules and Regulations shall:

- i. be called the Rules and Regulations for Insurance and Reinsurance Companies 2018; and
- ii. come into force with effect from 1st July 2018.

2.2 These Rules & Regulations shall be applicable to insurance and reinsurance companies licensed by the Authority.

INTERPRETATION AND AMENDMENT

3.1 The power to interpret any provision of these Rules & Regulations is vested with the Authority.

3.2 These Rules & Regulations may be amended in part or in whole from time to time, by the Authority.

SUPERSESSON & SAVINGS

4. These Rules & Regulations for Insurance & Reinsurance Companies in Bhutan 2018 shall supersede Investment Guidelines for Insurance Business 2015. However, Regulations for Establishment of Insurance Companies and Regulations for the Establishment of Reinsurance Business in Bhutan shall be legally valid until the Authority issues further notice.

PART 2 – FINANCIAL REQUIREMENT

Paid-up capital requirement

5. For the purposes of Sections 254 and 262 (a) of the Act, the minimum paid-up capital for an insurance or reinsurance business shall be:

- (a) Nu. 300 million, in the case of either direct life or non-life insurance business;
- (b) Nu. 600 million, in the case of life reinsurance business;
- (c) Nu. 1000 million, in the case of non-life reinsurance business; and
- (d) Nu. 1500 million, in the case of composite reinsurance business.

Statutory Deposits

- 6.1 An insurer/reinsurer shall, in respect of the insurance business carried out in Bhutan, deposit and keep deposited with the Authority in cash, the required minimum amount as statutory deposit specified in Section 255 of the Act.
- 6.2 Any interest accrued on the deposit made under Section 6.1 above may be paid to the insurer/reinsurer.
- 6.3 If any part of a deposit under Section 6.1 above is used in the discharge of any liability of the insurer/reinsurer, the insurer/reinsurer shall deposit such additional sum in cash as will make up the amount so used. The insurer/reinsurer shall be deemed to have failed to comply with the requirements stipulated under Section 255 of the Act, unless the deficiency is supplied within a period of sixty days from the date when the deposit or any part thereof is so used for discharge of liabilities.
- 6.4 Where an insurer's/reinsurer's license has been revoked, the Authority may utilize the deposit under Section 6.1 above, to the extent required to pay any sums outstanding and rightfully claimed by the policyholders of the insurer/reinsurer.
- 6.5 Where an insurer's/reinsurer's license has been revoked, the Authority will, upon being satisfied that there is no outstanding rightful claim by any policyholder of the insurer/reinsurer, release the deposit or the remainder thereof, as the case may be, to the insurer/reinsurer.
- 6.6 Any deposit made under Section 6.1 above shall be deemed to be part of the assets of the insurer/reinsurer but shall not be the subject of any encumbrance; nor shall it be available for the discharge of any liability of the insurer/reinsurer other than liabilities arising out of policies of insurance issued by the insurer/reinsurer in case of its insolvency.
- 6.7 Where a deposit is made in respect of life insurance business, the deposit shall be deemed to be a part of the assets of the shareholders' fund.

Fund solvency and capital adequacy requirement

- 7.1 For the purposes of Section 262 (b) of the Act, the solvency requirement in respect of an insurance fund established and maintained by a licensed insurer or reinsurer under Part 5 of these Rules & Regulations shall at all times be such that the financial resources of the fund are not less than the total risk requirement of the fund.

7.2 For the purposes of section 262 (b) of the Act, the capital adequacy requirement of a licensed insurer or reinsurer shall at all times be such that the financial resources of the insurer/reinsurer are not less than the aggregate of the total risk requirement of all insurance funds established and maintained by the insurer/reinsurer under these Rules & Regulations, and the total risk requirement arising from the assets and liabilities of the insurer/reinsurer that do not belong to any insurance fund established and maintained under these Rules & Regulations;

7.3 A licensed insurer/reinsurer shall immediately notify the Authority when it becomes aware that:

- (a) it has failed, or is likely to fail, to comply with Section 7.1 or 7.2; or
- (b) the financial resources of the insurer/reinsurer are, or are likely to be, less than 120% of the total risk requirements as calculated in accordance with Section 7.2.

7.4 Where the Authority is notified by an insurer or reinsurer under Section 7.3(a) or becomes aware of any inability by the insurer/reinsurer to comply with Section 7.1 or 7.2, the Authority shall or may:

- (a) require the insurer/reinsurer to comply with such directions as the Authority may impose, and in particular, require it to:
 - (i) submit to the Authority financial statements on a monthly basis or at such other intervals as the Authority may require, until the insurer satisfies the fund solvency requirement or the capital adequacy requirement, as the case may be, for 90 consecutive days or such other period as may be determined by the Authority;
 - (ii) submit to the Authority a plan on how the insurer intends to satisfy the fund solvency requirement or the capital adequacy requirement, as the case may be; or
 - (iii) stop renewing or issuing further policies in respect of one or more classes of business; and
- (b) direct the insurer/reinsurer to carry on its business in such manner and on such conditions as the Authority may impose.

7.5 If the Authority is notified by an insurer or reinsurer under Section 7.3(b) or becomes aware that an event as described under Section 8.3(b) has occurred, the Authority may direct it to:

- (a) submit to the Authority a comprehensive plan on how it intends to stop the situation from continuing; and
- (b) carry on its business in such manner and on such conditions as the Authority may impose.

Financial Resources

8.1 For the purpose of Section 7.1 & 7.2 of these Rules & Regulations, “financial resources” means:

(a) in relation to an insurance fund:

- (i) in the case of a participating fund, the balance in the surplus account; or
- (ii) in the case of any other insurance fund, the surplus of the assets of the fund over its liabilities,

less any reinsurance adjustment calculated in accordance with Section 8.2 and any financial resource adjustment as the Authority may prescribe; and

(b) in relation to a licensed insurer or reinsurer, the sum of the following items:

- (i) Tier 1 resource calculated in accordance with Section 8.3; and
- (ii) Tier 2 resource calculated in accordance with Section 8.4.

8.2 The reinsurance adjustment of an insurance fund shall be the aggregate of the reinsurance adjustments for each reinsurance counterparty calculated as $A \times B$, where:

A is the reinsurance reduction, which is:

- (a) in the case of the life business of the insurer, the reduction in the value of the liabilities of the insurer in respect of its participating policies and non-participating policies due to reinsurance ceded to that reinsurance counterparty, excluding any special risk ceded by way of reinsurance; or
- (b) in the case of the non-life business of the insurer, the reduction in unearned premium reserves of the insurer in respect of its non-life business due to reinsurance ceded to that reinsurance counterparty, excluding any special risk ceded by way of reinsurance; and

B is the reinsurance counterparty factor, which is the highest of:

- (a) 0%, in the case where the reinsurance counterparty is a licensed insurer or reinsurer in Bhutan;
- (b) 50%, in the case where the reinsurance counterparty is related to the insurer; or
- (c) the appropriate counterparty risk factor and based on the risk classification set out in the directive to be issued by the Authority.

Item A may be reduced, where there is a deposit from the reinsurance counterparty the deposit shall be held by the insurer as security for the whole of the liabilities of the reinsurance counterparty under the contracts of reinsurance to which the deposit relates, by the amount of the deposit but the reduction shall not cause item A to be less than zero.

8.3 “Tier 1 resource” of a licensed insurer/reinsurer means the sum of the following items:

- (a) the aggregate of the surpluses of the assets over the liabilities of all insurance funds (other than a participating fund);

- (b) the balance in the surplus account of each participating fund; and
- (c) the sum of:
 - (i) its paid-up ordinary share capital;
 - (ii) any unappropriated profit or loss that is not already accounted for less the items in sub-sections (a) and (b);
 - (iii) its irredeemable and non-cumulative preference shares; and
 - (iv) any other capital instrument approved by the Authority as a Tier 1 resource in respect of the insurer, less the aggregate of the reinsurance adjustments of all insurance funds and any financial resource adjustment.

8.4 “Tier 2 resource” of a licensed insurer/reinsurer means the sum of the following items:

- (a) its irredeemable and cumulative preference shares; and
- (b) any qualifying Tier 2 instrument approved by the Authority.

Total risk requirement

9.1 For the purpose of Section 7.1 & 7.2 of these Rule and Regulation, “total risk requirement” of an insurance fund or arising from assets and liabilities that do not belong to any insurance fund (including assets and liabilities of any of the insurer’s branches located outside Bhutan) means the sum of the following risk charges calculated in accordance with the directive to be issued by the Authority:

- (a) insurance risks;
- (b) investment risks; and
- (c) concentration risks.

9.2 The “total risk requirement” of a licensed insurer/reinsurer shall be the aggregate of the total risk requirements of every insurance fund and the total risk requirement arising from assets and liabilities that do not belong to any insurance fund (including assets and liabilities of any of the insurer’s branches located outside Bhutan).

9.3 The contribution to the total risk requirement of any asset excluded from the financial resources of the licensed insurer shall be zero.

PART 3 – VALUATION OF ASSETS

Valuation of assets

10. Unless otherwise specified in this Part, a licensed insurer shall value an asset of an insurance fund in accordance with the Bhutanese Accounting Standards.

Equity securities

11.1 A licensed insurer shall value an equity securities as follows:

- (a) where it is listed on a securities exchange, at its market value; or
- (b) where it is not listed on any securities exchange, at its net realisable value.

11.2 In determining the net realisable value of an equity securities which is not listed on a securities exchange, the insurer shall take into account the amount of consideration it would receive by selling the equity securities and the net tangible asset value of the equity securities.

Debt securities

12.1 A licensed insurer shall value debt securities as follows:

- (a) where it is listed on any securities exchange, at its market value; or
- (b) where it is not listed on any securities exchange, at its net realisable value.

12.2 In determining the net realisable value of a debt securities that is not listed on a securities exchange, the insurer shall take into account:

- (a) the prevailing interest rate;
- (b) the likelihood of default by the issuer; and
- (c) the cash flows that are expected to arise from the debt securities.

Land and buildings

13.1 A licensed insurer shall value any land or building at its estimated market value.

13.2 In estimating the market value of any land or building, the insurer shall take into account:

- (a) the last available valuation report;
- (b) the prevailing market for the land or building; and
- (c) any damage or improvement affecting the land or building from the date of the last available valuation report.

13.3 An insurer shall revalue:

- (a) when the value of the land or building has been substantially impaired by any event; and
- (b) in any event, at least once every 3 years.

13.4 For the purposes of Section 13.3, the valuer shall conduct a physical inspection of the land or building in providing the valuation.

Loans

14.1 A licensed insurer shall value loans made to other persons by aggregating the principal amounts outstanding under all loans less any provision for doubtful debts in accordance with the Prudential Regulations.

Cash and deposits

15.1 A licensed insurer shall value any cash or deposit with a financial institution, other than a negotiable certificate of deposit, at the nominal amount of such cash or deposit after deducting any amount deemed uncollectible from the financial institution.

15.2 A licensed insurer shall value a negotiable certificate of deposit at its market value.

Outstanding premiums and agents' balances

16.1 A licensed insurer shall value the outstanding premiums and agents' balances by aggregating the amounts outstanding after deducting any provision for doubtful debts.

Deposits withheld by ceding company

17. A licensed insurer shall value deposits withheld by it from the reinsurer by aggregating the amounts of deposits outstanding after deducting any amount deemed uncollectible from the reinsurer.

Reinsurance recoverable

18. A licensed insurer shall value reinsurance recoverable by aggregating the amounts of reinsurance recoverable outstanding after deducting any provision for doubtful debts.

Inadmissible assets

- 19.1 Assets of an insurance fund invested in asset classes other than those listed in this Part of the Rules & Regulations shall be inadmissible for the purpose of Part 3 of these Rules and Regulations.
- 19.2 Intangible assets and goodwill are inadmissible for the purpose of Part 2 of these Rules and Regulations.

PART 4 – VALUATION OF LIABILITIES

Valuation of liabilities of life insurance business

- 20.1 A licensed insurer/reinsurer shall value the liability in respect of a non-participating policy as the value of expected future payments arising from the policy, including any expense that the insurer expects to incur in administering the policy and settling any relevant claims and any provision made for any adverse deviation from the expected experience, less expected future receipts arising from the policy, but not less than zero for any policy.
- 20.2 A licensed insurer/reinsurer shall value the liability in respect of a participating policy as the sum of (a), (b) and (c) below, but not less than zero for any policy:
- (a) the value of expected future payments arising from guaranteed benefits of the policy, including any expense that the insurer expects to incur in administering the policies and settling the relevant claims, less expected future receipts arising from guaranteed benefits of the policy;
 - (b) the value of expected payments arising from non-guaranteed benefits of the policy in respect of:
 - (i) future allocations by way of bonus; and
 - (ii) future allocations to the surplus account; and
 - (c) any provision made for any adverse deviation from the expected experience.
- 20.3 The assumptions used for the purpose of Section 20.1 and 20.2 include discount rate, mortality and morbidity rates, expenses and inflation on future expenses, policy lapse and surrender rates, and future bonus rates. The discount rate shall be the risk-free discount rate, and all other assumptions shall be consistent with the insurer's experience.

Valuation of liabilities of non-life insurance business

- 21.1 A licensed insurer/reinsurer shall calculate the liabilities in respect of its non-life business as the sum of (a) and (b) below:

- (a) premium liabilities, which shall be the unearned premium reserves of the fund calculated as the aggregate of unearned premium reserves for each policy of the fund determined on a basis not less accurate than the 1/24th method; and
- (b) claim liabilities, which shall be an amount not less than the sum of:
 - (i) the value of the expected future payments in relation to all claims incurred prior to the valuation date (other than payments which have fallen due for payment on or before the valuation date), whether or not they have been reported to the insurer, including any expense expected to be incurred in settling those claims; and
 - (ii) any provision for any adverse deviation from the expected experience.

21.2 In determining the liabilities, a licensed insurer/reinsurer shall:

- (a) calculate the amount of claim liabilities as the amount net of reinsurance ceded:
 - (i) by making separate estimates of the gross incurred claims and recoveries from the reinsurance counterparty; and
 - (ii) by taking into account the likelihood of default by the reinsurance counterparty.
- (b) take into account any non-reinsurance recovery such as salvage and subrogation.

21.3 A licensed insurer/reinsurer shall make separate calculations of the premium liabilities, and the claims liabilities for each line of business.

PART 5 – ACCOUNTS AND REPORTS

Maintenance of insurance funds

- 22.1 Every licensed insurer or reinsurer shall establish and maintain a separate insurance fund for each class of insurance business carried on by the insurer/reinsurer. The Authority shall require the insurer/reinsurer to establish and maintain separate insurance funds for other businesses carried on by the insurer/reinsurer.
- 22.2 There shall be paid into an insurance fund all receipts of the insurer properly attributable to the business to which the fund relates (including the income of the fund), and the assets comprised in the fund shall be applicable only to meet such part of the insurer's liabilities and expenses as is properly so attributable.
- 22.3 The assets of any insurance fund established by an insurer/reinsurer shall be kept separate from all other assets of the insurer/reinsurer.
- 22.4 In the case of a participating fund, no part of the fund shall be allocated by way of bonus to the participating policies except:

- (a) with the approval of the directors of the insurer, upon considering a written recommendation from the actuary; and
- (b) where the making of such allocation does not contravene any condition or restriction that may be prescribed or specified in directions issued by the Authority.

Surplus account

23.1 In the case of a participating fund, there shall be a surplus account established and maintained as part of the participating fund:

- (a) by keeping the assets of the surplus account separate from other assets of the fund; and
- (b) by identifying the particular assets that form part of the surplus account in its books, accounts and records.

23.2 The insurer may allocate to the surplus account:

- (a) an amount not exceeding 1/9th of the amount allocated to participating policyholders for a particular accounting period; and
- (b) an amount relating to investment income earned on balance in the surplus account.

23.3 The insurer shall deduct from the surplus account:

- (a) any amount withdrawn from the fund not exceeding the outstanding balance of the surplus account; and
- (b) any expense or loss relating to the investment of assets in the surplus account.

Returns to be lodged by insurers

24. An insurer/reinsurer shall lodge for each insurance fund established and maintained in respect of its life/non-life business on a quarterly basis except the return on loan & advances (Section 24.13), which will be on a monthly basis and return on fund solvency, which will be on a half-yearly basis (Section 24.9):

- 24.1 a fund balance sheet as at the end of every quarter;
- 24.2 a fund profit and loss statement;
- 24.3 a statement of premiums for life business;
- 24.4 a statement of premiums for non-life business;
- 24.5 a statement of claims, received, paid and outstanding;

- 24.6 details on reinsurance arrangements for outward business;
- 24.7 details on reinsurance arrangements for inward business;
- 24.8 a statement of technical provisions;
- 24.9 fund solvency;
- 24.10 capital adequacy;
- 24.11 details on contributory plan (PF);
- 24.12 details on non-contributory Plan (GF); and
- 24.13 sectoral classification of loans.

Deadline for submission of returns/reports

- 25.1 The reporting date for the reports is the last working day of the period to which it pertains. A licensed insurer/reinsurer shall submit the quarterly returns to the Authority on or before the last day of the following month.
- 25.2 An insurer/reinsurer is required, within three months after the close of each financial year to prepare a balance sheet and profit and loss account as of the last working day of that year. An insurer/reinsurer must send to the Authority the auditor-initialled balance sheet, profit and loss account and external auditor's report described in Chapter 6 of the Act. The submission to the Authority of these final accounts and actuary's report as described in Section 27 of these Rules & Regulations shall be within 14 days of its preparation by the statutory auditors and the appointed actuary. In addition, an insurer/reinsurer shall also submit two copies of its annual report to the Department of Financial Regulation & Supervision of the Authority.
- 25.3 In terms of Section 96 of the Act, a licensed insurer/reinsurer must publish its annual audited accounts in a national newspaper. An insurer/reinsurer shall make available copies of their audited annual accounts and half-yearly unaudited financial statements on their websites.
- 25.4 If an insurer/reinsurer should have problems in finalizing its draft accounts early due to differences in opinion between its management and external auditors over income recognition and provisioning for bad and doubtful debts, the insurer/reinsurer concerned and its external auditors shall discuss and resolve these matters with the Authority to avoid delay in finalizing the accounts. Under such situation, it is mandatory for the external auditors and the insurer/reinsurer to meet with the Authority's examining officers to finalize the necessary provisions. If the auditors do not agree with the management, they may submit the draft accounts with a "subject to proviso" on the disputed items.

25.5 A licensed insurer/reinsurer shall ensure that the audit of their accounts by the external auditors is promptly carried out after the close of each financial year.

Valuation of assets and liabilities and calculation of financial and risk requirements

26 In any document which a licensed insurer or reinsurer is required to prepare in accordance with these Rules & Regulations, the value or amount given for an asset or a liability of the insurer or the calculation of financial resources and risk requirement of the insurer shall be the value or amount of that asset or liability or that calculation, as the case may be, as determined in accordance with Parts 2, 3 and 4 of these Rules & Regulations or any direction issued by the Authority.

Duties of the actuaries

27 The actuary appointed under Section 259 of the Act shall prepare an annual actuarial investigation of the insurer's life business and prepare and present a report of his investigation to the board of directors with a copy to the Authority. The content of this actuarial report shall contain, at the minimum, the following information:

- (a) a statement regarding the reasonableness of the data used, including reconciliation of data from the previous valuation;
- (b) the assumptions used to determine the liabilities, any changes in assumptions from the previous valuation, and the impact of assumption changes, if any;
- (c) an analysis of experience variance by source to support the continuing reasonableness of the assumptions used;
- (d) the solvency position of the insurer, including comments on the appropriateness of the investments backing the liabilities;
- (e) the basis of the recommended bonus to be declared on participating policies for the year, and the impact on the solvency position after the bonus declaration and allocation to the surplus account; and
- (f) a certification that the valuation was done in accordance with any applicable requirements.

PART 6 – POWERS OF THE AUTHORITY

Assets of an insurer not to be mortgaged or charged

28 Assets of an insurer or reinsurer shall not be mortgaged or subject to any other form of charge or encumbrance without the consent of the Authority. In the absence of this consent being given, any mortgage or charge purportedly registered against the assets shall be void against the rights of a liquidator or creditor in the event of insolvency.

Approval of all insurance products

29 The insurer shall submit the details of an insurance product, including the premium rates, to the Authority for approval before offering it to the non-life public. Submission for approval of a life insurance product shall include a certificate from the actuary appointed under section 259 of the Act stating that the premium rates for the product are adequate for the benefits being provided. Any revision in the products thereof shall be approved by the Authority.

Approval of dividend payment

30 An insurer that complies with the following criteria shall be eligible to declare dividends:

- (g) An insurer shall have a minimum capital of 120 percent of total risk requirements after the proposed dividend payment;
- (h) A combined ratio of less than 80 percent;
- (i) Net non-performing loan ratio of less than 5 percent for the accounting year for which it proposes to declare dividend.

Quantum of dividend payable

31 An insurer which fulfils the eligibility criteria set out in Section 30 is eligible to declare and pay dividends, subject to the following: (a) the dividend pay-out ratio (including any interim dividend) shall not exceed 65 percent of the profit after tax of the accounting year for which insurer proposes to declare dividend.

Mandatory Cession to Domestic Reinsurers

32 A licensed insurer shall cede a minimum amount or percentage of its outward reinsurance business to licensed reinsurers in Bhutan. The Authority shall prescribe such minimum/percentage amount by directive.

PART 7 – MARKET CONDUCT

Treating Customers Fairly

33.1 Insurers shall follow the principles of fair treatment of customers in their interactions with the insured and their beneficiaries. The board of directors and senior management of a licensed insurer should review its overall business model to ensure that it is consistent with dealing fairly with its customers through achieving the following desired outcomes:

- (a) Consumers have confidence that they are dealing with firms where the fair treatment of customers is central to the corporate culture;
- (b) Insurers offer products and services that are suitable for the targeted customer segments;
- (c) Customers receive clear, relevant and timely information to make informed financial decisions;
- (d) Where consumers receive advice, the advice is suitable and takes account of their circumstances; and
- (e) Insurers handle customer complaints in an independent, effective and prompt manner.

33.2 The Authority may issue guidelines from time to time to indicate its expectation on the fair dealing outcomes.

Policy Terms

34.1 Insurers shall not offer any product document or premium rate table, unless they have been approved by the Authority; and

34.2 Insurers shall endeavour to use language in the policy document that is easily understood by their customers, and shall not use any contract terms that are unfair to the customers.

Timely payment of claims

35.1 An insurer shall pay every insurance claim in a timely, fair and transparent manner. To ensure timely payment of claims, an insurer shall establish internal service standard for paying claims; and

35.2 An insurer shall establish a dispute resolution procedure based on a balanced approach. Procedures shall avoid being overly complicated, such as having burdensome paperwork requirements. Decisions shall include the reasoning in clear language relating closely to the specific disputable issues.

Appropriate advice

36 The insurer shall ensure that its sales agents collect a minimum amount of information about a prospective customer's financial circumstances, insurance needs and risk appetite before recommending a life insurance policy.

Qualification and training of agents and representatives

37.1 The minimum age of an agent or representative of the insurer shall be 18.

37.2 An insurer shall provide training to its agents and representatives before allowing them to meet with customers or potential customers without supervision. The training consists of the following:

- (a) The features of the products, including the financial outlay by the customer, the circumstances under which the customer may make a claim, and the rights of the insurer and the customer under the policy. An agent or representative may not sell the products on which training has not been provided;
- (b) The conduct expected of agents and representatives, such as being honest, reliable, respectful, and not accepting or offering gifts where this might imply an improper obligation;
- (c) The information that shall be presented to the customers at the point of sale; and
- (d) For life insurance, the appropriate sales process and advice given.

37.3 An insurer shall keep a training record of each of its agents and representatives for review by the Authority during on-site visits.

PART 8 – PORTFOLIO TRANSFER

Transfers of Life business

38.1 Where it is proposed to carry out a scheme under which the whole or part of the life business carried on by an insurer ("the transferor company") is to be transferred to another insurance company licenced under the Act ("the transferee company") the transferor company or the transferee company ("the applicant") shall apply to a Court for an order sanctioning the scheme;

- 38.2 No such transfer as is mentioned in Section 38.1 above shall be carried out, unless the scheme relating to the transfer has been sanctioned by a competent Court and, where the scheme requires a compromise or arrangement of the rights of contracting parties of the transferor company, the order made shall have effect in respect of any such compromise or arrangement;
- 38.3 The Court shall not determine an application under Section 38.1 above, unless the application is accompanied by a report on the terms of the scheme by an independent actuary and the Court is satisfied that the terms of Section 38.4 below have been complied with;
- 38.4 The applicant shall issue a notice stating that the application has been made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in Section 38.5 below will be available as required by that Section; such notice to be published in the official newspaper and in such other ways as appear expedient for notifying the public.
- 38.5 Except where the Court has directed otherwise, the applicant shall issue a notice confirming that a statement:
- (a) setting out the terms of the scheme; and
 - (b) containing a summary of the report of the actuary mentioned in Section 38.3 above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the life policy holders of the companies concerned;
- has been sent to each of those policyholders and to every members of the companies concerned.
- 38.6 The applicant shall confirm that a copy of the application to the Court of the report of the actuary mentioned in Section 38.3 above and of any statement sent out under Section 38.4 above has been served to the Authority and that a period of not less than twenty-one days has elapsed since the date of such service;
- 38.7 The applicant shall confirm that copies of the application to the Court of the report of the actuary mentioned in Section 38.3 above and of any statement sent out under Section 38.4 above have been open to inspection at offices of the companies concerned for a period of not less than twenty-one days beginning with the date of the first publication of the notice mentioned in Section 38.4 above;
- 38.8 On any application to the Court under Section 38.1 above, the following shall be entitled to be heard:
- (a) the Authority; and
 - (b) any person (including any employee of the transferor company or transferee company) who alleges he would be adversely affected by the carrying out of the scheme.
- 38.9 The Court will sanction the transfer only where it is satisfied that:
- (a) the transferee company is, or will be immediately after the making an order sanctioning the scheme, authorized under the Law to conduct insurance business of the class of business being transferred; and

(b) the Authority certifies that the company possesses the necessary margin of solvency after taking the proposed transfer into account.

38.10 Where the Court makes an order sanctioning a scheme the Court may, either by that order or any subsequent order, make provision for all or any of the following matters:

- (a) the transfer to the transferee company of the whole or any part of the business and of the property and liabilities of the transferor company;
- (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or like interests in that company which under the scheme are to be allotted to or appropriated by that company to or for any person;
- (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
- (d) the dissolution, without winding up, of the transferor company; and
- (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme be fully and effectively carried out.

38.11 Where such an order provides for the transfer of property or liabilities that property shall, by virtue of that order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company; and

38.12 Where such a scheme is sanctioned by the Court the transferee company shall, within ten days of the date on which the order is given publish a notice to that effect in the official newspaper and in such other ways as appear expedient for notifying the public.

Transfers of Non-life business

39.1 Where it is proposed to execute an instrument by which the non-life business of an insurer authorised under the Act (“the transferor company”) is to be transferred to another insurer authorized under the Act (“the transferee company”) all of its rights and obligations under such general policies, or such general policies of such description as may be specified in the instrument, the transferor shall apply to the Authority for their approval of the transfer.

39.2 Any notice or other document authorized or required to be given or served under this regulation may, without prejudice to any other method of service, be served by post; and a letter containing the notice or other document shall be deemed to be properly addressed if it is addressed to that person at his last known address in Bhutan.

39.3 The Authority shall not determine an application under Section 39.1 above, unless they are satisfied that:

- (a) a notice approved by the Authority has been published in the newspaper and in such other ways as appear expedient for notifying the public;
- (b) except in so far as they have otherwise directed, a copy of the notice has been sent, at least thirty days before the proposed transfer, to every affected policyholder and any other person who claims an interest in a policy included in the proposed transfer and has given written notice of his claim to the transferor; and
- (c) copies of a statement setting out the particulars of the transfer and approved by the Authority for the purpose have been on display at the registered office of the transferor, and all its other branches or offices, for a period of not less than thirty days beginning with the date of the first publication of the notice mentioned in Section 39.1 above.

39.4 The notice referred to in sub-section 39.3 (a) above shall include a statement that written representations concerning the transfer may be sent to the Authority before a specified day which may not be earlier than sixty days after the day of the first publication of the notice in accordance with Section 39.3 (a) above, and the Authority shall not determine the application until after considering any representations made to them before the specified day, such application being deemed to be declined if not determined within six months of the specified day.

39.5 For the purposes of this regulation, a policyholder is an “affected policyholder” in relation to a proposed transfer if:

- (a) his policy is included in the transfer; or
- (b) his policy is with the transferor and the Authority has certified, after consulting the transferor, that in the opinion of the Authority the policy holder’s rights and obligations under the policy may be materially affected by the transfer.

39.6 The Authority will approve the transfer only where it is satisfied that:

- (a) the transferee company is, or will be immediately after the making of an order sanctioning the scheme, authorized under the law to conduct insurance business of the class of business being transferred;
- (b) the Authority certifies that the company possesses, or will possess immediately after the making of an order sanctioning the scheme, the necessary margin of solvency after taking the proposed transfer into account; and
- (c) they are also satisfied that every policy included in the transfer evidences that it was a contract entered into before the date of the application.

39.7 Where the Authority determines an application under Section 39.1 above they shall:

(a) publish a notice of their decision in the official newspaper and in such other ways as appear expedient for notifying the public; and

(b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in Section 39.3 (a) above.

39.8 An instrument giving effect to a transfer approved by the Authority shall be effective in law:

(a) to transfer to the transferee company all of the rights and obligations, under the policies included in the instrument, of the transferor company;

(b) to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights and obligations, notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.

39.9 Where such an order may provide for the transfer of property or liabilities that property may, by virtue of that order, be transferred to and vest in, and those liabilities may, by virtue of the order, be transferred to and become the liabilities of, the transferee company.

39.10 Except in so far as the Authority may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he is given written notice of its execution by the transferor or transferee.

PART 9 – WINDING UP

General provisions to winding up

40.1 On an application of the Authority, the Court may order under the provisions of the Companies Act and relevant provisions of the Act the winding up of a company incorporated in Bhutan which is carrying on or has carried on insurance business in Bhutan if the Authority has exercised any power under Section 173 of the Act in relation to the company.

40.2 On an application of the Authority, the Court may order under the provisions of the Companies Act the winding up of an unlicensed company which is carrying out or has carried out insurance business in Bhutan if:

(a) the Authority has exercised any power under Section 173 of the Act in relation to the company;

(b) the company has been licensed under the Act, and that licence has been revoked or has expired and has not been renewed; or

(c) the company is carrying on or has carried on insurance business in Bhutan in contravention of any provision of the Act.

40.3 Notwithstanding provisions under the Companies Act, on an application of the Authority for the winding up of a company which is carrying on or has carried on insurance business in Bhutan, any statement of account lodged by the company with the Authority at any time during the period beginning with the close of the last financial year of the company and ending with the making of the application for the winding up which shows that the company is insolvent shall be evidence that the company is unable to pay its debts, unless the Court, in its discretion, directs to furnish additional evidence on this issue.

40.4 Notwithstanding any written law or rule of law, no person shall be appointed as a liquidator under the Companies Act of a company which is carrying out or has carried out insurance business in Bhutan, without the prior written approval of the Authority; and

40.5 Notwithstanding any written law or rule of law, a liquidator appointed in respect of a licensed insurer carrying on insurance business in Bhutan shall, when winding up the licensed insurer:

(a) endeavour, as far as reasonably practicable, to sell or transfer the whole or part of the insurance business of the licensed insurer to any other insurer licensed to carry on the relevant class or classes of business;

(b) continue to carry on the insurance business of the licensed insurer until the whole insurance business is transferred to another insurer licensed to carry on the relevant class or classes of business, unless directed by the Court; and

(c) have all necessary powers to carry out the functions set out in Sections 40.5 (a) and (b).

40.6 The Authority may at any time appoint one or more actuaries to perform an independent assessment of, and furnish a report on, the proposed transfer of the insurance business of a company by a liquidator pursuant to subsection 39.4 above. The remuneration and expenses of any actuary so appointed shall be paid by the licensed insurer. The Authority shall serve a copy of any report furnished by the actuary on the liquidator.

40.7 Notwithstanding any written law or rule of law, where a company which is carrying on or has carried on insurance business in Bhutan is being wound up, the Authority shall, subject to such modifications as may be necessary, have the same powers and rights as a creditor of the company under the Companies Act including the right to appear and be heard before a Court in any proceedings in the winding up.

40.8 Without prejudice to Section 40.6 and notwithstanding any written law or rule of law, where a company which is carrying on or has carried on insurance business in Bhutan is being wound up, its liquidator shall give the Authority such information as the Authority may from time to time require about the affairs of the company or the winding up.

40.9 Any liquidator who:

- (a) without reasonable excuse, fails to comply with subsection 40.7; or
- (b) in purported compliance with subsection 40.7, knowingly or recklessly furnishes any information or document that is false or misleading in a material particular, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding Nu. 100,000 and, in the case of a continuing offence, to a further fine not exceeding Nu. 10,000 for every day or part thereof during which the offence continues after conviction.

40.10 The Authority shall be a party to any proceedings under the Companies Act relating to the winding up of the affairs of an insurer licensed under the Act, and the liquidator in such a winding up shall give the Authority such information as it may from time to time require about the affairs of the insurer or insurance broker, as the case may be.

Special provision for insurers directed to cease insurance business

41.1 Where the Authority gives an insurer a direction under Section 173 of the Act by reason of the insolvency of the fund maintained by the insurer under the Act for either class of insurance business, the affairs of the insurer may be wound up by the Court under the Companies Act as if it had ceased to carry on business.

41.2 Where the Authority gives an insurer a direction under Section 173 of the Act but, on an application for the affairs of the insurer to be wound up by the Court, the Court is satisfied that the insurer will be able to pay its debts in full within 12 months or such longer period as the Court thinks reasonable, the Court may (if it thinks fit) order the affairs of the insurer to be wound up only as regards the insurance fund maintained for the class of insurance business to which the direction relates.

41.3 An order made under Section 40.2 for a limited winding up shall be of the same effect as an order for the affairs of the insurer to be wound up generally, except in so far as this section otherwise provides.

41.4 Where such an order is made, the powers of the liquidator shall be exercisable only for the purpose of applying the assets of the relevant insurance fund in discharging the liabilities to which they are applicable, together with the costs, charges and expenses incurred in the winding up.

41.5 The insurer shall, from time to time, as the Court may direct, make such additions to those assets as are required to secure that they are sufficient for the purpose or shall, if the Court so directs, discharge any of those liabilities out of other assets.

41.6 Where such an order is made, the Court may, at any time, on the application of the liquidator or of any person who might apply for the affairs of the insurer to be wound up:

- (a) substitute an order for the affairs of the insurer to be wound up generally; and

- (b) give such directions as the Court thinks fit as to matters in progress under the previous order, and, subject to any such directions, the winding up shall, for all purposes connected with the substituted order, be deemed to have commenced at the time of the application for that order.

Priority of claim of policyholders

- 42.1 Where a licensed insurer becomes unable to meet its obligations or becomes insolvent, the assets of the licensed insurer shall be available to meet all liabilities in Bhutan of the licensed insurer.
- 42.2 The liabilities in Bhutan of the licensed insurer shall have priority over all unsecured liabilities of the insurer other than the preferential debts specified in the Companies Act.
- 42.3 Notwithstanding the provisions of any written law or any rule of law relating to the winding up of companies, in the event of a winding up of a licensed insurer, the following liabilities in Bhutan of the licensed insurer (which include liabilities which are properly attributable to the business to which an insurance fund relates) shall rank in the following order of priority:
 - (a) firstly, any liabilities incurred by the licensed insurer in respect of direct policies;
 - (b) secondly, any liabilities incurred by the licensed insurer in respect of reinsurance policies.
- 42.4 The liabilities in each class specified in Section 42.3 shall rank in the order specified therein but as between liabilities of the same class shall rank equally between themselves; and be paid in full unless the assets of the licensed insurer are insufficient to meet them in which case they shall abet in equal proportions between themselves.

PART 10 – PENALTIES AND OFFENCES

- 43. A person who contravene any requirement of the Act, rules or regulations, or directives, or circulars, or any direction issued by the Authority, and any director, or other office of such person, who is knowingly a party to the contravention, shall be penalized as per the Penalty Rules and Regulations 2018.

PART 11 – DEFINITIONS

44. Under these Rules & Regulations, individual terms shall have the following meaning:

- (a) “**Act**” means the Financial Services Act of Bhutan 2011;
- (b) “**Actuary**” means a person who is a fully qualified and registered member of one of the actuarial bodies recognized by the International Actuarial Association;
- (c) “**Authority**” means the Royal Monetary Authority of Bhutan established under the Royal Monetary Authority Act of Bhutan 2010;
- (d) “**Insurance agent**” is as defined in the Act;
- (e) “**Insurance business**” is as defined in the Act;
- (f) “**Insured**” means the person for whom an insurer covers direct insurance risks;
- (g) “**Insurer**” is as defined in the Act;
- (h) “**Intermediaries**” means insurance brokers, agents and sub-agents, as well as any other natural or legal person, whose object is to arrange and present insurance contracts and to provide services concerning the relations between insurers and insured persons;
- (i) “**Intermediation**” means the activity provided by intermediaries;
- (j) “**New business**” means writing new insurance contracts, which includes renewal of insurance contracts;
- (k) “**Participating fund**” means an insurance fund established and maintained which comprises wholly or partly of participating life insurance policies;
- (l) “**Reinsurance**” means the business of insuring an insurer.