

Rwanda

## Regulation governing Change in Shareholding, Amalgamation and Transfer of Portfolio of Insurers and Reinsurers

Regulation 46 of 2022

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## Rwanda

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## Regulation 46 of 2022

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**Assented to on 2 June 2022**

**Commenced on 17 June 2022**

*[This is the version of this document from 17 June 2022.]*

Pursuant to Law N° 48/2017 of 23/09/2017 governing the National Bank of Rwanda as amended to date, especially in its articles 6, 6bis, 8, 9, 10 and 15;

Pursuant to Law N° 030/2021 of 30/06/2021 governing the organization of insurance business, especially in its articles 53 and 55;

Pursuant to Law N° 007/2021 of 05/02/2021 governing companies, especially in its articles 198, 199, 200, 201, 202, 203, 204, 205, 206, 207 and 208;

Having reviewed the regulation N° 34/2020 of 08/06/2020 governing change in shareholding, amalgamation and transfer of portfolio of insurers and reinsurers;

The National Bank of Rwanda hereinafter referred to as the "Supervisory Authority", issue the following regulation:

## Chapter One General provisions

### Article One – Purpose

This regulation aims at establishing requirements under which the Supervisory Authority may authorize transactions related to shareholding, portfolio transfer, amalgamation and demutualization with a view to ensuring the orderly transfer of insurance business.

### Article 2 – Definitions of terms

In this Regulation, unless the context requires otherwise, the following words and expressions shall mean:

- 1° significant holding: a shareholding in an insurer that, directly or indirectly, alone or in conjunction with others, represents at least five percent (5%) of the equity capital of the company or voting rights, or that makes it possible to exercise a significant influence over decisions related to the management of an insurer;
- 2° acquisition: an act of getting an effective control by one insurer over an insurer's shares or assets or management, following the purchase, an exchange of shares, a combination of both, donation and succession;
- 3° amalgamation: merger of two or more insurers that operate in the same line of business to form a resulting insurer with the same existing shareholders and assets and liabilities;

- 4° demutualization: change from mutual insurance category to either, general insurance or to long-term insurance;
- 5° a mutual insurer: an insurance entity entirely owned by its policyholders. Any profits earned by a mutual insurance are either retained within the fund or rebated to policyholders in the form of dividend distributions or reduced to future premiums;
- 6° private insurer: any type of insurer whether long-term or general which is licensed under the Law governing organization of insurance business;
- 7° a significant owner: a person who holds a significant holding over an insurer or reinsurer;
- 8° commercial public institutions: any institution established according to Law establishing general provisions governing public institutions and whose establishment, mission, organization and functioning are under specific Laws and which is supervised by the Supervisory Authority of financial institutions;
- 9° controlling interest: power by which natural persons or legal entities exercises control over an insurer by the holding of any of the following:
  - a) more than fifty percent (50%) in the equity capital;
  - b) 50% of voting rights in either the insurer or the insurer's holding company, where relevant;
  - c) the right to appoint or remove majority of a directors of an insurer who are at the same time shareholders of that insurer;
  - d) the power to exert influence over an insurer on the basis of a contract entered into with that insurer, or to a clause in the bylaws of said insurer; or
  - e) such amount of shares, financial instruments or voting power in the insurer or the insurer's holding company, where relevant, to be able to exercise significant influence over the management of the insurer.
- 10° resulting insurer: an insurer resulting from acquisition or amalgamation under this Regulation;
- 11° transferor insurer: the insurer which transfers its assets and liabilities to a receiving insurer;
- 12° portfolio transfer: the transfer of the whole or part of a portfolio of insurance or reinsurance contracts from one insurer or reinsurer to another.

### **Article 3 – Scope**

This Regulation applies to licensed insurers and reinsurers.

### **Article 4 – Prohibitions**

A licensed insurer or a reinsurer shall not, in whatever manner, proceed to any of the following activities without prior approval of the Supervisory Authority:

- 1° increase, acquire or transfer significant holding or controlling interest; and
- 2° carry out transaction of amalgamation or portfolio transfer or demutualization.

General insurer shall not amalgamate or enter into agreement of acquisitions or portfolio transfer with long-term insurer and *vice versa*.

### **Article 5 – Restrictions on shareholding**

No natural person including his or her related party or a corporate body including its related party owned or controlled by one natural person other than a sound financial institution or commercial public institutions shall directly or indirectly own or acquire more than twenty-five (25%) of the shares of a private insurer.

The provisions of Paragraph One of this Article shall not apply to the Government of Rwanda and its institutions nor to foreign governments, international institutions and any other person on conditions that they have been approved by the Supervisory Authority.

### **Article 6 – Fit and proper requirements**

Every person who becomes significant owner or has control over an insurer or reinsurer because of acquisition or portfolio transfer or amalgamation of insurers or reinsurers or demutualization shall satisfy the requirements of “fit and proper” criteria as required by relevant Laws and Regulations into force.

### **Article 7 – Pre-approval assessment**

After an application, by insurer or reinsurer under this Regulation, for increase of shares or acquisition or transfer of significant holding or controlling interest, the Supervisory Authority, prior to the decision to approve or not to approve the application, shall assess whether the transaction shall:

- 1° not jeopardize the interests of the policyholders;
- 2° not compromise the governance of insurer or reinsurer;
- 3° not be detrimental to the public interest;
- 4° not compromise soundness and/or stability of an insurer or reinsurer;
- 5° not hinder effective supervision of the insurer or reinsurer on solo and consolidated basis;
- 6° not be detrimental to the insurance sector in general.

The resulting insurer or reinsurer shall comply with all prudential norms as required by the Supervisory Authority.

## **Chapter II**

### **Requirements for increase and acquisition of shares in an insurer or reinsurer**

#### **Article 8 – Application to the Supervisory Authority**

An insurer or reinsurer shall, on behalf of a person who is seeking to increase, acquire or transfer shares equivalent to significant holding or controlling interest, apply in writing to the Supervisory Authority providing details on the nature of the increase, acquisition or transfer and any such information that may be requested by the Supervisory Authority.

An insurer or reinsurer shall provide personal or corporate information in respect of a person who is seeking to increase, acquire or alienate significant holding or controlling interest as specified in the APPENDIXES of Regulation on licensing conditions for insurers.

The insurer or reinsurer shall also provide details of the impact on its ownership and operational structure that will result from the proposed increase, acquisition or alienation of significant shareholding or controlling interest.

The insurer or reinsurer shall also provide the proof of financial strength and ability of the applicant to provide additional capital if needed.

The submission of any untrue or misleading information shall render the applicant a person not fit and proper and shall constitute grounds for rejection of the application for the increase, acquisition or alienation of shares.

A new shareholder shall submit a statement to the effect that the proposed funding or investment is not from illegal, criminal and suspicious activities.

## **Article 9 – Approval or rejection of application**

The Supervisory Authority may approve the application for increase, acquisition or transfer of significant holding or controlling interest, if it is satisfied that the application satisfies both the requirements of this Regulation and applicable legal and Supervisory Authority requirements.

## **Article 10 – Supervisory control levels of significant holding**

Any significant holding increases above 5% of the predetermined control levels in an insurer or reinsurer by legal or natural person, whether obtained individually or in association with others shall obtain prior approval by the Supervisory Authority.

If the increase specified in Paragraph One of this Article by persons indicated there would directly or indirectly reach or exceed the supervisory levels of control referred to in Paragraph One of this Article, the insurer/reinsurer shall obtain prior permission from the Supervisory Authority.

## **Article 11 – Other specific requirements on the transfer of significant holding and controlling interests**

The Supervisory Authority obtains from insurer or reinsurer, through periodic reporting or on-site examinations, the names and holdings of all significant shareholders or those that exert control over an institution, including the identities of beneficial owners who hold shares through nominees, custodians or vehicles that might be used to disguise ownership.

The Supervisory Authority may recommend the modification, reverse or otherwise address a change of control within an insurer or reinsurer.

An insurer or reinsurer shall notify to the Supervisory Authority as soon as they become aware of any material circumstance, which may negatively affect the suitability of a significant owner or a party that has a controlling interest.

Without prejudice to the previous Paragraphs of this Article, an insurer or reinsurer shall notify to the Supervisory Authority any change in the shareholding structure.

## **Chapter III Amalgamation, portfolio transfer and demutualization**

### **Section One – Amalgamation and portfolio transfer**

#### **Article 12 – Application for non-objection**

Any insurer or reinsurer seeking to affect amalgamation or portfolio transfer shall seek non-objection from the Supervisory Authority.

The application referred to in Paragraph One of this Article shall be signed by Managing Directors/CEOs of the insurers or reinsurers to the transaction and accompanied by the following documents/ information:

- 1° an extract of minutes of the general meeting of the shareholders of each of the insurers seeking to affect amalgamation or portfolio transfer and terms and conditions of the relevant agreement;
- 2° latest audited accounts for all the insurers involved in the amalgamation or portfolio transfer;
- 3° no objection letter from home Supervisory Authority and other involved supervisors in case of a subsidiary belonging to an insurance-led group;
- 4° measures in place to protect the interests of policyholders;

- 5° a statement indicating whether the portfolio transfer is in whole or in part;
- 6° a statement of the nature and objectives of amalgamation or portfolio transfer;
- 7° a copy of the proposed agreement for amalgamation or portfolio transfer;
- 8° expected impact to policyholders by amalgamation or portfolio transfer; and
- 9° any other document that the Supervisory Authority may enquire, or the applicant may think can help the Supervisory Authority in assessment of the application.

### **Article 13 – Notice of amalgamation or portfolio transfer**

After securing a non-objection of the Supervisory Authority, insurers or reinsurers seeking to affect amalgamation or portfolio transfer shall, publish a joint-notice on at least:

- 1° on two radio channels of national coverage;
- 2° on the insurer's or reinsurer's respective website;
- 3° two newspapers of wide circulation in the Republic of Rwanda; and
- 4° any other media channel of the insurer's or reinsurer's choice.

The announcement shall communicate the process of amalgamation or transfer of insurer or reinsurer's portfolio. The concerned insurers or reinsurers specify, within that announcement, the proposed date on which transaction is to be completed.

The notice referred to in Paragraph One of this Article shall invite any policyholder or reinsured who has reasonable ground to believe that he or she would be adversely affected by the amalgamation or transfer of insurer or reinsurer's portfolio, to make written petition to the Supervisory Authority specifying possible effect that such transaction may have on him or her.

The mention of the adverse effect stated in the previous paragraph shall be done within thirty (30) days from the last day of publication.

### **Article 14 – Application for final approval**

The applicants of either amalgamation or portfolio transfer shall, within ten (10) working days from the date of issue of non-objection letter, submit to the Supervisory Authority the following documents:

- 1° a copy of resolutions of the board of directors of all the participating insurers approving the proposed amalgamation or portfolio transfer;
- 2° insurers' copy of consolidated accounts duly certified by an independent firm of auditors as at the date of application for approval;
- 3° memorandum and articles of association of the resulting insurer;
- 4° actuarial reports and abstract in respect of long-term insurance business of both insurers, such as reports and abstract of the transferor insurer as at the date of proposed amalgamation, or portfolio transfer, as the case may be;
- 5° financial projections for the first three (3) years of operation after amalgamation or portfolio transfer transactions;
- 6° proposed details of the method of valuation and the valuator and proposed organizational structure of the resulting insurer;
- 7° proposed shareholding structure;
- 8° provide appropriate information on their shareholders and any other person directly or indirectly exercising control;

- 9° proposed board of directors, organizational structure and senior management of the resulting insurer, if applicable;
- 10° proposed staff rationalization of post-amalgamation or portfolio transfer program;
- 11° assessment of tax implications of the transaction;
- 12° operational contingencies and marketing plan;
- 13° business strategy plan including business continuity management;
- 14° IT system to be adopted;
- 15° legal due diligence covering all areas of any legal concerns that may face the resulting insurer with specification on current litigations and anticipated litigation;
- 16° the name under which they intend to use in case of change of name;
- 17° communication plan to the public; and
- 18° any other document that the Supervisory Authority may enquire, or the applicant may think can help the Supervisory Authority in assessment of the application.

The audited accounts stated in article 12 of this regulation and actuarial reports and abstracts referred to in point (4°) of this Article shall be prepared as at period at which the amalgamation or portfolio transfer is intended to be effected. This period shall not be more than twelve months before the date of the application.

An actuary shall indicate in his/her report probable effect of the amalgamation or portfolio transfer to the policyholders.

An actuary referred to under this Article is the one approved by the Supervisory Authority as appointed actuary.

### **Article 15 – Final decision to the application**

The Supervisory Authority shall, within one month after receipt of a complete application, investigate and take a decision to the application.

The decision of the Supervisory Authority may:

- 1° grant the approval if it is satisfied that the application satisfies the requirements;
- 2° grant the approval subject to the fulfilment of certain conditions that it may deem necessary; or
- 3° refuse to grant the approval.

The Supervisory Authority shall inform the applicant, in writing, of its decision. If it denies granting the approval, it gives reasons for such a refusal in writing.

### **Article 16 – Final approval of amalgamation or portfolio transfer**

In case the Supervisory Authority is satisfied that it will approve amalgamation or portfolio transfer of insurers or reinsurers, it requires the applicant to submit the new certificate of incorporation, the new shareholding structure and any other approval from any competent authorities before granting the final approval.

### **Article 17 – Requirements for post amalgamation or portfolio transfer**

All rights, liabilities and facilities enjoyed by the merging insurer or reinsurer shall be transferred to the resulting insurer or reinsurer and any hire purchase or finance leases shall be assigned or transferred.

The resulting insurer or reinsurer shall inform the public of any change that resulted in the transaction that may affect them.



Where an amalgamation or transfer of insurer or reinsurer's portfolio has been approved, the merged insurers or reinsurer or the transferee insurer or reinsurer shall, within ten (10) days from the date of completion of the amalgamation or transfer of insurer's portfolio, deposit with the Supervisory Authority the following copies certified by an external auditor:

- 1° statements of the respective assets and liabilities;
- 2° documents under which the amalgamation or portfolio transfer was effected.

### **Article 18 – Maintenance of records**

During and after execution of agreement related to the amalgamation or transfer of insurer or reinsurer's portfolio, the insurer or reinsurer shall:

- 1° ensure that the right accounting systems and procedures are in place;
- 2° adjust accounting in the books of an insurer as a result of the portfolio received or transferred;
- 3° close books of accounts of the entity being absorbed, if not closed;
- 4° close or transfer all bank accounts, income tax file et Pay As You Earn files, if not closed or were not transferred; and
- 5° review or consolidate policy and procedures manual, if they were not reviewed or consolidated

## **Section 2 – Demutualization**

### **Article 19 – Application for demutualization**

A mutual insurer may apply to demutualize to any other category of insurer provided by Law governing organization of insurance business.

### **Article 20 – Plan of demutualization and amendment of articles of association**

A mutual insurer that seeks to demutualize shall initially proceed to the following:

- 1° put in place a plan for demutualization that must be voted by members; and
- 2° amend the articles of association.

The vote of the plan for demutualization shall be done following the procedure of votes respected during general meetings of members.

The Supervisory Authority shall approve the plan of demutualization prior to authorization of the final demutualization.

### **Article 21 – Content of application file**

The application must contain the following information, together with such additional information as the Supervisory Authority may require:

- 1° the plan of demutualization;
- 2° a statement of the reasons for the proposed demutualization and why the demutualization is in the best interests of the demutualizing insurer and policyholders;
- 3° a number of members who accepted or did not accept relinquishing the ownership they have in the mutual insurer;
- 4° how the members who did not accept relinquishing their ownership shall be dealt with;

- 5° a five (5) year business plan;
- 6° a list of all individuals who are or have been proposed to become directors or senior managers. If new, they must seek approval of the Supervisory Authority prior to discharging their duties as provided by Regulation on licensing of insurers and reinsurer;
- 7° any additional information, documents, or materials that the demutualizing insurer determines to be necessary;
- 8° any other additional information, documents, or materials that the Supervisory Authority may require.

The statement under point (2°) of this Article shall include an analysis of the risks and benefits associated to demutualization and a comparison of the risks and benefits of the demutualization with the risks and benefits of reasonable alternatives to a demutualization.

### **Article 22 – Approval of demutualization**

In case the Supervisory Authority is satisfied that it will approve demutualization of insurer, it shall inform the applicant to submit the certificates of incorporation, the new shareholding structure and any approval from the competent authorities before granting the approval. After the reception of these documents, the Supervisory Authority authorizes the execution of the plan for demutualization.

### **Article 23 – Execution of the demutualization plan**

After the proposed plan of demutualization is voted by members and approved by the Supervisory Authority, the demutualizing insurer may proceed to executing the plan.

## **Chapter IV Final provisions**

### **Article 24 – Penalties**

Where an insurer is in violation of this regulation, the Supervisory Authority may apply any relevant sanctions established under the law governing organization of insurance business and its implementing Regulations.

### **Article 25 – Drafting, consideration and approval of this Regulation**

This Regulation was prepared, considered and approved in English.

### **Article 26 – Repealing provision**

Regulation N° 34/2020 of 08/06/2020 governing change in shareholding, amalgamation and transfer of portfolio of insurers and reinsurers and any other prior provisions contrary to this Regulation are hereby repealed.

### **Article 27 – Commencement**

This Regulation shall come into force on the date of its publication in the Official *Gazette* of the Republic of Rwanda.