

Rwanda

Regulation relating to Special Procedures Applicable to Winding up of Insurance Companies

Regulation 7 of 2012

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Regulation relating to Special Procedures Applicable to Winding up of Insurance Companies

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Pursuant to Law n° 55/2007 of 30/11/2007, governing the Central Bank of Rwanda, especially in articles 6, 53, 56, 57 and 58;

Pursuant to Law n° 52/2008 of 10/09/2008, governing the organization of insurance business, especially in articles 62, 63 and 64;

Pursuant to Law n° 07/2009 of 27/04/2009, relating to companies as modified and complemented to date;

Pursuant to Law n° 12/2009 of 26/05/2009 relating to Commercial Recovery and Settling Issues Arising from Insolvency;

The National Bank of Rwanda hereinafter referred to as “Central Bank”, decrees:

Chapter One Insolvency and winding up

Article one – Purpose

This regulation aims at:

- a) Putting in place the special, procedures of winding up of insurance companies;
- b) protecting policyholders, beneficiaries and other creditors;
- c) ensuring the orderly exit of insurers from the market and the maintenance of efficient, fair, safe and stable insurance market in the country.

Article 2 – Voluntary liquidation

Notwithstanding anything to the contrary in the Law relating to companies, an insurer shall not be wound up voluntarily except for the purposes of effecting amalgamation or transfer.

Article 3 – Winding up by court

Where a petition for the winding up of an insurance company is presented by a person other than the Central Bank, a copy of the petition shall be served on the Central Bank and the Central Bank shall be entitled to be heard on the petition.

Article 4 – Insolvency

For the purpose of the Companies Law, an insurance company shall be deemed to be unable to pay his/her debts if at any time the insurer does not comply with the requirements of articles 11 and 12 of the Law governing the organization of insurance business.

Chapter II Procedure for winding up

Article 5 – Petition procedure for winding up

The Central Bank may, unless the insurer is already being wound up by the court, present an application to the court for winding up the insurer in accordance with companies Law under the following circumstances:

- a) In terms of article 8, 10, 11 and 12 of the Law governing the organization of insurance business;
- b) On the grounds of the insurer's failure to comply with any requirement of the Law governing the organization of insurance business;
- c) On grounds that the insurer is unable to fulfill the reasonable expectations of policyholders or potential policyholders;
- d) On grounds that it is just and equitable in the interest of policyholders that the insurer should be wound up.

Except where it is otherwise provided by the Law governing the organization of insurance, the winding up procedure provided under the Companies law shall apply.

The Central Bank shall in presenting a petition for winding-up under this article, be deemed to be a creditor of the insurer.

Article 6 – Procedure for winding up a secondary Company

Where the insurance business or any part of the insurance business of an insurer has been transferred to another insurer under an arrangement in pursuance of which such insurer is known as secondary company or the creditors thereof has or have claims against the insurer to which the transfer was made under this article as principal company, if the later company is being wound up by or under the supervision of the court, the court may, subject to the provisions of this article, order the secondary company to be wound up in conjunction with the principal company and may by the same or any subsequent order appoint the same person to be liquidator for the two insurers and make provision for such other matters as may seem to the court necessary, with a view to the insurers being wound up as if they were one insurer.

Article 7 – Commencement of the winding up of principal and secondary companies

The commencement of the winding up of the principal company shall, except as otherwise ordered by the court, be the commencement of the winding up of the secondary company.

In adjusting the rights and liabilities of the members of the several insurers between themselves, the court shall have regard to the constitution of the insurers, and to the arrangements entered into between the insurers in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single insurer or as near thereto as circumstances admit.

Where an insurer alleged to be the secondary company is not in process of being wound up at the same time as the principal company to which the insurer is secondary, the court shall not order the secondary company to be wound up unless, after hearing any objections that may be urged by or on behalf of the insurer against being

wound up, the court is of the opinion that the insurer is secondary to the principal company and that the winding up of the insurer in conjunction with the principal company is just and equitable.

Article 8 – Application for winding up

An application may be made in relation to the winding up of a secondary company in conjunction with a principal company by any person interested in, or any creditor of the principal or secondary company.

Where an insurer stands in the relation of a principal company to one insurer, and in relation of a secondary company to another insurer, or where there are several insurers standing in the relation of secondary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this article.

Article 9 – Insurers being subsidiaries of non-insurers

Where an insurer is a subsidiary of a company which is not an insurer, and the latter company is wound under the Companies Law or otherwise:

- a) the subsidiary shall not be wound up except on the basis of a separate application for winding up;
- b) where the subsidiary carries on long term insurance business, whether with or without other classes of insurance business, and is ordered to be wound up, all the admitted assets together with any other assets of the subsidiary which have been included in a separate balance sheet relating to the long term insurance business, and together also with any assets which, though not shown against the balance sheet, should in the opinion of the court be equitably related to the long term policyholders, shall be treated as exclusively reserved for the benefit of the policyholders of the long term insurance business, and those assets shall not be utilized directly or indirectly for any purpose other than for the benefit of the long term insurance policyholders as long as those policy holders have not been fully discharged or otherwise provided for.

Article 10 – Supplementary provisions for winding up

In any proceedings upon a petition to wind up an insurer presented by the Central Bank under article 5 of this regulation, evidence that the insurer was insolvent at the close of the period to which the accounts and balance sheet of the insurer last deposited under article 51 of the law governing insurance business relate, or at any date as at which an investigation was last made under article 36 of the law governing insurance business or regulation, shall be evidence that the insurer continues to be unable to pay his debts, unless the contrary is proved.

Article 11 – Valuation of assets and liabilities

Subject to any direction which may be given by the court:

- a) the value of the assets and liabilities shall be ascertained in such manner and upon such basis as the liquidator thinks fit;
- b) the liabilities of an insurer in respect of the current policies of long term insurance business shall, as far as practicable, be calculated by the method and upon the basis to be determined by an actuary appointed by the court;
- c) the liabilities of an insurer in respect of the current policies of short insurance business shall, as far as practicable, be such portion of the last premium paid as is proportionate to the unexpired portion of the policy in respect of which the premium was paid.

In determining the liabilities, the actuary appointed under the law governing insurance business and regulation shall, of liabilities, take into account any special directions which may be given to him by the court.

Article 12 – Continuation of business of insurer in liquidation

The liquidator shall, so far as it may be possible and unless the court otherwise orders, carry on the insurance business of an insurer with a view to it being transferred as a going concern to another insurer, whether an existing company or a company formed for the purpose, and, in carrying on that business, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not affect any new contracts of insurance.

If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the insurer attributable to his business require the appointment of an administrator of the business, he may apply to the court, and the court may on the application appoint an administrator of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.

The court may require an administrator to give such security as it considers necessary.

The court may make such order as it considers appropriate with regard to the payment of remuneration to the administrator.

The court may, subject to such conditions if any as it may determine, reduce the amount of the contracts made by an insurer in the course of carrying on his business as an alternative to winding up or otherwise.

Chapter III Final provisions

Article 13 – Repealing provisions

All previous provisions contrary to this regulation are hereby repealed.

Article 14 – Commencement

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