NOTICE NO. TIU/N-3/2020/14

NOTICE ON ESTABLISHMENT AND MAINTENANCE OF INSURANCE FUNDS FOR INSURANCE COMPANIES

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1. INTRODUCTION

1.1. This Notice is issued pursuant to section 88 of the Insurance Order, 2006 ("the Order") with the aim of ensuring the proper attribution of assets and liabilities to businesses of registered insurance companies. This is fulfilled through appropriate segregation of insurance funds, implementing effective controls over withdrawals from insurance funds and establishing policies and procedures governing the insurance funds.

1.2. This Notice shall be read in conjunction with the following:

1.2.1. Section 20 of the Insurance Order, 2006;

1.2.2. Notice on Exemption for Valuation of Assets [Notice No. TIU/N-1/2016/1]; and

1.2.3. any other notices, directives or guidelines, which the Authority may issue from time to time.

1.3. This Notice shall take effect on 1 July 2021.

2. DEFINITIONS

2.1. For the purpose of this Notice:

2.1.1. "actuary" has the same meaning as section 2(1) of the Order;

2.1.2. "additional fund(s)" means as required by the Authority under section 20(2) of the Order;

2.1.3. "assets" refer to movable and immovable property, or otherwise;

2.1.4. "board" means the Board of Directors of the company;

2.1.5. "capitalised expenditure" has the same meaning as section 24(1) of the Order;

2.1.6. “insurance fund” refers to a fund established and maintained by that insurer pursuant to section 20 of the Order;

2.1.7. “insurer” means a registered insurance company under the Order, unless it is otherwise specified; and

2.1.8. “shareholders’ fund” means a fund that represents the assets and liabilities of an insurer that is not attributable to policyholders.

3. ESTABLISHMENT AND MAINTENANCE OF INSURANCE FUND(S)

3.1. An insurer shall establish and maintain general or life insurance funds established under section 20 of the Order separate from its shareholders’ funds.

3.2. The insurer shall establish proper policies and procedures governing the establishment and maintenance of insurance fund(s). This includes investment and creation of additional insurance fund(s).

3.3. A life insurer shall establish and maintain separate insurance funds according to the following categories:

3.3.1. participating life policies;

3.3.2. non-participating life policies; or

3.3.3. policies in respect of investment-linked insurance business for each investment fund.

3.4. In the case that insurers find themselves in liquidation, the assets of each insurance fund should be used to meet that fund’s liabilities to policyholders before meeting liabilities of other insurance or shareholders’ funds.

3.5. The insurer establishing additional insurance fund(s) shall develop and implement policies which include, but are not limited to the following:

3.5.1. objective of establishing and maintaining the additional insurance fund(s);

3.5.2. investment and risk strategies of the additional insurance fund(s);

3.5.3. impact of the additional insurance fund(s) to the management of existing insurance fund(s) and overall business strategy;

3.5.4. process to assess performance of the additional insurance fund(s) and its long-term sustainability; and

3.5.5. arrangement to report to the board and relevant stakeholders on paragraphs 3.5.1 to 3.5.4.

3.6. Subject to paragraph 3.8, the insurer is allowed to consolidate any additional insurance fund(s), if the insurer is of the view that the consolidation will improve the long-term sustainability of the insurance fund(s) to the benefit of policyholders.

3.7. The insurer shall establish and implement policies and procedures for the consolidation of additional insurance fund(s), that include, but are not limited to the following:

3.7.1. requirement to conduct assessment on sustainability of the insurance fund(s) to meet future claims;

3.7.2. requirement to conduct assessment on the impact of the consolidation on fair treatment to policyholders; and

3.7.3. a summary of the actuary's assessment on the impact of the consolidation on the financial condition of the insurance fund(s) and the interest of policyholders, and recommendations, if any.

3.8. Upon deciding to consolidate or create insurance fund(s), the insurer shall notify the Authority in writing no later than 30 days from the date of any consolidation or creation of the fund(s).

3.9. The insurer shall maintain separation of the insurance fund(s) or create additional insurance fund(s) as may be required by the Authority where the Authority deems it is necessary to protect the interests of policyholders and ensure sustainability of insurance fund(s).

4. EXPENSES ATTRIBUTED TO AN INSURANCE FUND

4.1. Insurers shall have sound internal processes to ensure that all receipts and expenses of each insurance fund are properly attributable to the insurance funds.

4.2. Expenses that cannot be clearly identified as relating to a specific insurance fund shall be allocated among all the insurance funds on an equitable basis. Each type of expense shall be determined by the actuary or officer in charge of the financial management of the life insurer, and be consistently applied annually.

5. COMPOSITION OF AN INSURANCE FUND

5.1. With regard to the assets attributed to an insurance fund:

5.1.1. an insurer shall maintain the assets of each insurance fund separately;

5.1.2. the value of assets shall be determined in accordance with the requirements specified in Notice No. TIU/N-1/2016/1; and

5.1.3. the following shall not be included in an insurance fund:

a) goodwill;

b) any amount of capitalised expenditure; and

c) any other item of expenditure similar to paragraph 5.1.3 (b) which cannot be distinguished or differentiated from the insurer's business, wholly or partly, to which that insurance fund relates.

5.1.4. the insurer shall maintain all relevant information supporting the valuations in paragraph 5.1.2 for the Authority's review as and when required by the Authority.

5.1.5. the insurer shall obtain a valuation by an independent professional valuer to validate material fair value changes or revaluations at any time should the Authority require, of which the cost shall be borne by the insurer.

5.2. The insurer shall ensure that its records and accounts with regard to each insurance fund are kept in a manner that allows the assets of each insurance fund to be readily accountable and identifiable at all times. There shall be no uncertainty as to the assets comprised in each insurance fund.

5.3. The liabilities of an insurance fund shall be valued in accordance with the requirements of the Risk-Based Capital and Solvency Framework for Insurers.

6. SWITCHING OF ASSETS BETWEEN INSURANCE FUNDS

6.1. An insurer shall not effect any switching of assets between insurance funds unless it is necessary to do so.

6.2. In the case the insurer effects any switching of assets between insurance funds, the following shall apply:

6.2.1. when switching of land or buildings between insurance funds, the insurer shall first obtain the Authority's approval, who may grant it subject to such conditions or restrictions as it thinks fit; and

6.2.2. within 30 days from the date of any switching of assets, the insurer shall notify the Authority in writing the types of assets switched, the funds involved, the basis of determining the prices, the amount transferred, any transaction costs and reasons for the switch.

6.3. For the purpose of effecting any switching of assets between insurance funds, the insurer shall value the assets to be switched in accordance with Notice No. TIU/N-1/2016/1. For insurers registered to carry on life business, it shall ensure that its appointed actuary certifies that all such transactions do not adversely affect the interests of the policyholders.

7. **WITHDRAWALS FROM AN INSURANCE FUND**

7.1. An insurer shall not make any withdrawals from an insurance fund unless the insurer has complied with sections 20(5) and 20(6) of the Order.

7.2. For the purpose of withdrawals and allocation of the surplus of assets over liabilities in respect of the life insurance funds, the term ‘participating life policies’ includes:

7.2.1. an extension of a participating life policy; or

7.2.2. a non-participating life policy which has an extension conferring a right to the policyholder to participate in allocations of which the amount or timing is at the discretion of the insurer, from the assets of a life insurance fund.

7.3. When an actuary recommends a distribution of the surplus of a life insurance fund, the surplus shall be distributed by way of:

7.3.1. a transfer out of that life insurance fund to the shareholders’ fund; and/or

7.3.2. for a life insurance fund relating to participating life policies, bonus to policyholders.

7.4. For a life insurance fund relating to non-participating policies, the surplus determined by an actuarial valuation at the end of a financial year shall first be applied to make good any deficit determined by an actuarial valuation of a life insurance fund relating to participating policies before any remaining surplus can be transferred to the shareholders’ fund.

7.5. Where a life insurer does not transfer any part of the surplus to its shareholders’ fund under paragraph 7.4, there shall be no subsisting entitlement for a subsequent transfer in respect of that remaining surplus, except on the basis of an actuarial valuation at the end of a subsequent financial year, and subject to paragraph 7.4.

7.6. For the surplus of a life insurance fund relating to participating policies, the actuary shall not recommend that the surplus be transferred to shareholders if he views that the surplus shall be used as an additional reserve to meet the insurer’s liabilities to policyholders and their expectations.

7.7. The surplus allocated for declaring bonus to policyholders of participating policies shall be a sum of:

7.7.1. the present value of the bonus using the valuation basis of the guaranteed benefits liability, in the case where the bonus is not immediately paid out but is accrued as an additional future obligation under the participating policy;

7.7.2. the amount payable, in the case where the bonus is immediately paid out upon declaration; and

7.7.3. the amount paid out, in the case where the bonus has already been paid out in anticipation of the current bonus declaration, or as terminal bonus.

7.8. Where the actuary does not recommend the allocation of the entire surplus of the life insurance fund relating to participating policies, or where a life insurer does not transfer any part of the surplus to its shareholders' fund, the policyholders or shareholders will not have any subsisting entitlement for a subsequent allocation or transfer in respect of that remaining surplus, except on the recommendation of the actuary as at the end of a subsequent financial year.

7.9. Where a life insurance fund has been determined to be in deficit by an actuarial valuation at the end of a financial year, the life insurer shall:

7.9.1. apply any amount, determined as transferable to the shareholders' fund (according to the requirements in this section) from another life insurance fund, to make good the deficit; and

7.9.2. immediately make good any deficit subsisting by a transfer from the shareholders' fund into the life insurance fund.

7.10. Where the life insurer maintains more than one life insurance fund relating to participating policies in accordance with section 20 of the Order, it shall not apply the surplus of a participating life insurance policy to make good the deficit, or to increase the surplus, in other participating life insurance funds (except to the extent of the amount recommended by its actuary).

MANAGING DIRECTOR

AUTORITI MONETARI BRUNEI DARUSSALAM

Issue date: 1 Zulkaedah 1441 / 23 June 2020