



NATIONAL COMMISSION FOR FINANCIAL MARKETS

DECISION

on the approval of the Regulation on the time limits, procedure, and methods for issuing approvals regarding transactions, requirements for keeping the Register of guarantees, commitments, and other obligations of the insurer or reinsurer

No 30/8 of 13.06.2023

(in force as of 27.06.2023)

Official Monitor of the Republic of Moldova No 216-219 Article 619 of 27.06.2023

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REGISTERED:
Ministry of Justice
of the Republic of Moldova
No 1804 of 22 June 2023
Minister _____ Veronica MIHAILOV-MORARU

Pursuant to Article 32 paragraph 2) letter a), Article 76 paragraph 4) and paragraph 5) of Law No 92/2022 on the business of insurance or reinsurance (Official Monitor of the Republic of Moldova, 2022, No 129 – 133, Article 229), the National Commission for Financial Markets

DECIDES:

1. To approve the Regulation on the time limits, procedure, and methods for issuing approvals regarding transactions, requirements for keeping the Register of guarantees, commitments, and other obligations of the insurer or reinsurer (shall be attached).

2. To repeal the Decision of the National Commission for Financial Markets No 38/17/2014 on the approval of the Regulation on the Register of guarantees, commitments, and other obligations of the insurer (reinsurer) not reflected in the balance sheet, registered at the Ministry of Justice of the Republic of Moldova No 1002 of 29 October 2014.

3. This Decision shall enter into force on the date of its publication in the Official Monitor of the Republic of Moldova.

CHAIRMAN **Dumitru BUDIANSCHI**
No 30/8. Chisinau, 13 June 2023.

Approved
by the Decision
of the National Commission
for Financial Markets
No 30/8 of 13 June 2023

REGULATION

on the time limits, procedure, and methods for issuing approvals regarding transactions, requirements for keeping the Register of guarantees, commitments, and other obligations of the insurer or reinsurer

CHAPTER I GENERAL PROVISIONS

1. The Regulation on the time limits, procedure, and methods for issuing approvals regarding transactions, requirements for keeping the Register of guarantees, commitments, and other obligations of the insurer or reinsurer (hereinafter – *Regulation*) shall apply to insurers or reinsurers licenced to conduct insurance or reinsurance activity and sets out the requirements for:

1) keeping the Register of guarantees, commitments, and other obligations of the insurer or reinsurer, and the method for their issuance;

2) the conditions and procedure for issuing prior approval for the investment of more than 15 percent of the insurer's or reinsurer's own capital in the share capital of commercial companies;

3) taking out credits or loans exceeding 10 percent of the value of the share capital and concluding large transactions.

2. The terms and expressions used in this Regulation shall have the meaning provided for in Law No 92/2022 on the business of insurance or reinsurance (hereinafter - Law No 92/2022) and in the regulations issued by the supervisory authority for its application. For the purposes of this Regulation, the following terms and expressions shall have the following meanings:

cumulative transaction - several financial operations linked to each other which are intended for the same purpose, irrespective of the periodicity of their execution, together representing a single transaction;

transaction – any investment carried out by insurers or reinsurers of more than 15 percent of their own capital in the share capital of companies, the obtaining of credits or loans exceeding 10 percent of the value of the share capital by insurers or reinsurers, and the conclusion of large transactions by insurers or reinsurers.

3. Without prejudice to the provisions of paragraph 4, the obligations of the insurer or reinsurer which are not covered by this Regulation are as follows:

1) obligations to pay insurance/indemnities claims or other benefits assumed by the terms and conditions of the insurance contracts concluded, including costs and payments for the settlement of claims;

2) payments arising out of reinsurance operations;

3) salaries, rewards, bonuses, commissions, other payments provided for in the employment contract or civil contract;

4) payments to sellers of goods, service providers and other suppliers;

5) taxes, duties and payments laid down by law.

4. The provisions of this Regulation shall apply to the reimbursement of amounts due under the obligations/payments referred to in paragraph 3, which are secured by a guarantee, commitment or other obligation over all or part of the insurer's or reinsurer's existing or future assets and not reflected in the balance sheet.

5. The insurer or reinsurer shall carry out transactions in a cost-effective and profit-earning manner and their outcome shall not prejudice the interests of policyholders (beneficiaries) or infringe competition law or other regulations and rules applicable to insurers or reinsurers and/or companies, as confirmed by a declaration of the executive body of the insurer or reinsurer.

6. All documents provided for in this Regulation shall be submitted to the supervisory authority in Romanian. If the documents are drawn up in another language, they shall be apostilled, accompanied by a certified translation into Romanian. Copies of the documents have to be legalised in accordance with the law or certified by the signature of the company's governing body.

7. Issuance by the insurer or reinsurer of guarantees, assumption of commitments and other obligations not reflected in the balance sheet shall be carried out in the manner established by the Civil Code of the Republic of Moldova.

Chapter II

PROVISION ON TIME LIMITS, PROCEDURE AND METHODS FOR ISSUING PRIOR APPROVALS

Section I General Provisions

8. Under the provisions of this Regulation, prior to seeking approval from the supervisory authority, any investment/transaction shall be approved by the competent management body of the insurer or reinsurer.

9. Investments shall be made in compliance with prudential investment risk management rules. When making investments, the insurer or reinsurer shall ensure that its investment policies and strategies provide for the hedging of investment risks and assess which of the risks (concentration risk, credit risk, liquidity risk, operational risk, market risk, underwriting risk, single risk and other risks, as appropriate) could adversely affect its financial position. If the risk situation related to the transaction develops unfavourably, the insurer or reinsurer should outline the specific measures to be applied.

10. The insurer or reinsurer shall define and implement policies to identify, assess and manage investment/transaction risks in terms of their impact on balance sheet and off-balance sheet assets and liabilities.

Section 2 Equity investment

11. When an insurer or reinsurer acquires or increases shares in the share capital of a company, the value of which exceeds 15 percent of the insurer's or reinsurer's own capital, according to the audited financial report for the last reporting period, regardless of whether the investment is made simultaneously or through several cumulative transactions, prior approval shall be sought by submitting an application to the supervisory authority, signed by the executive body and accompanied by the following documents:

1) the extract from the State Register of legal entities, issued by the competent authority of the company's home country, if investing in a non-resident company, issued no later than one month before the application is submitted;

2) a reasoned decision by the competent management body of the insurer or reinsurer to make the investment;

3) the decision of the competent management body of the company ordering the acceptance of the investment, if such an act exists;

4) a certified copy of the articles of association of the company in whose share capital the investment is made;

5) list of entities in which the investing company holds directly or indirectly at least 25 percent of the share capital, indicating the shares held;

6) audited financial statements for the last 2 years of the company in whose share capital the investment is made, with the audit reports attached, except for newly created companies.

7) the document certifying the absence of tax debts of the company and other debts to the national public budget;

8) the business plan of the company in whose share capital the investment is made for the next 3 years, certified in accordance with the regulatory framework, which shall contain at least the following:

a) the nature of the risks or commitments that the company proposes to cover and, therefore, assume;

- b) a description of the company's objectives, policies and strategy;
- c) a description of the planned dividend policies;
- d) asset structure;
- e) the draft organisational structure showing its ability to achieve its proposed objectives, including the powers of the members of the governing bodies;
- f) the projected balance sheet(s) (financial statements) for the next 3 financial years, which shall be accompanied by basic calculations of the principal elements of the financial statements;
- 9) the insurer's or reinsurer's investment project, authenticated by the executive body, which shall contain at least the insurer's or reinsurer's investment objective, indicating in detail the assumptions for the achievement of the objective, the analysis of the forecast performance as a result of making the investment for the next 3 financial years, including a description of the investment risks;
- 10) the calculation of the insurer's or reinsurer's solvency ratio and liquidity ratio, certified by the actuary, before and after the investment is made, provided that other data remain unchanged;
- 11) analysis of the impact of making the investment on the assets eligible to cover technical provisions and the minimum capital requirement;
- 12) the audit report on the financial statements, as of the last quarter prior to the submission of the application, confirming the structure of the insurer's or reinsurer's available financial resources with reference to the unencumbered assets that may be invested by the insurer or reinsurer;
- 13) a declaration by the executive body of the insurer or reinsurer.

12. By way of derogation from paragraph 11, in the case of acquisition by the insurer or reinsurer of shares listed on the stock exchange, the application submitted to the supervisory authority for prior approval for the investment of more than 15 percent of the insurer's or reinsurer's own capital in the capital of a company shall be accompanied only by the documents referred to in paragraph 11 subparagraph 2), 9) - 13).

13. If the insurer or reinsurer has control over the company in which it has invested, the company shall be deemed to be dependent on the insurer or reinsurer and, at the request of the supervisory authority, the insurer or reinsurer shall submit a copy of the audited financial statements of the company with the audit reports attached.

Section 3

Obtaining credits or loans

14. The insurer's or reinsurer's obtaining of credits or loans exceeding 10 percent of the share capital, whether acquired in a single transaction or cumulatively through several separate transactions, requires prior approval from the supervisory authority.

15. For the approval of contracting credits or loans exceeding 10 percent of the share capital, the insurer or reinsurer shall submit an application to the supervisory authority, accompanied by the following documents:

- 1) a reasoned decision of the competent management body of the insurer or reinsurer, ordering the taking out of credits or loans;
- 2) the draft credits or loans agreement or the draft memorandum of understanding with the creditor;
- 3) the objective, purpose and necessity of taking out by the insurer or reinsurer of credits or loans, detailing the sources of repayment of the credits or loans and the expected return;
- 4) the valuation report of the property pledged as security for the credits or loans, drawn up by the persons entitled to issue such documents, if such a document exists;

5) a certified copy of the legal document attesting the ownership of the asset offered as collateral, if such document exists;

6) a declaration by the executive body of the insurer or reinsurer.

16. When examining the draft credits or loans agreement or the memorandum of understanding with the creditor, the supervisory authority shall, in so far as relevant, consider at least the following situations or circumstances:

1) whether there is a contractual clause that the amount of the credits or loans with related penalties, in the event of non-fulfilment of the obligation to repay the credits or loans within the prescribed period, shall be converted into additional shares issued by the insurer or reinsurer;

2) whether the credits or loans is secured by a pledge and whether the property is valued in accordance with the legal conditions laid down for the type of property to be pledged;

3) whether the asset covered by the pledge agreement is used as an asset covering technical provisions and the minimum capital requirement;

4) whether the credits or loans were drawn down for the purpose of directing the borrowed funds to shareholders, its related persons, directors or key persons within the insurer or reinsurer.

Section 4

Large transactions

17. All large transactions of the insurer or reinsurer shall be carried out with the prior approval of the supervisory authority, issued in accordance with the provisions of this Regulation, except the transactions related to the portfolio transfer.

18. When taking a decision on the conclusion of a large transaction, the competent management body of the insurer or reinsurer shall comply with the requirements set out in paragraphs 8 to 11 and ensure compliance with the legal rules on the conclusion of large transactions laid down in Law No 1134/1997 on joint stock companies.

19. The conclusion of a large transaction shall not prejudice the interests of policyholders (beneficiaries).

20. In order to apply for prior approval for the conclusion of a large transaction, the insurer or reinsurer shall submit an application to the supervisory authority, which shall be accompanied by the following documents:

1) the decision of the competent management body of the insurer or reinsurer on the conclusion of the large transaction;

2) the plan for the implementation of the large transaction and the details of its implementation, signed by the executive body;

3) the draft documents (agreements, memoranda of understanding) relating to the large transaction;

4) certified copies of the title deeds to the assets subject to the large transaction, if applicable;

5) a description of the asset, which is the subject of the large transaction, if the case may be;

6) certified copies of the documents valuing the market value of the assets subject to the large transaction, if valuation of the asset is possible;

7) a copy of the decision made by the competent management body regarding the insurer's or reinsurer's engagement in a large transaction, published in the news outlet as referred to in the articles of association of the insurer or reinsurer;

8) the calculation of the insurer's or reinsurer's solvency ratio and liquidity ratio, certified by the actuary, before and after the large transaction is carried out;

9) analysis of the impact of the large transaction regarding the assets eligible for technical provisions and the minimum capital requirement;

10) the audit report on the financial statements confirming the structure of the insurer's or reinsurer's available funds with reference to unencumbered assets which may be encumbered (pledge, guarantee, loan) by the insurer or reinsurer, if such an act exists;

11) a declaration by the executive body of the insurer or reinsurer.

21. The insurer or reinsurer shall describe in the notes to the annual financial statements the performance of the transactions undertaken, giving a detailed analysis of the performance of the transaction against the stated objectives, investment policy and strategy described in paragraphs 11 and 12, and the impact of the transaction on the financial position and profitability of the insurer or reinsurer for the reporting period.

Chapter III

ISSUANCE OR REFUSAL OF THE PRIOR APPROVAL

22. The supervisory authority shall approve or refuse the issuance of the prior approval within 30 days from the date of submission the application and all documents, in full, in accordance with the provisions of this Regulation.

23. When examining the documents attached to the application for prior approval regarding the conclusion of a transaction submitted by the insurer or reinsurer, the supervisory authority may order an inspection or request confirmatory documents to verify the compliance of the insurer or reinsurer with the provisions for the conclusion of the initiated transaction. While the supervisory authority is carrying out the check or providing the confirmatory documents requested, the 30-day period shall be suspended.

24. If changes or new circumstances have arisen during the examination of the application and the documents submitted for prior approval, the insurer or reinsurer is obliged to inform the supervisory authority and submit the amended documents.

25. If the documents or information submitted are insufficient for the decision on the issuing of the prior opinion, the supervisory authority may request the necessary documents and information, including from other persons or authorities to the extent that such information is necessary to carry out the opinion provided for in this Regulation.

26. In the cases referred to in paragraphs 24 and 25 and where additional information is required, the time limit laid down in paragraph 22 may be extended or suspended for a period to be determined by the supervisory authority, with the insurer or reinsurer being informed. If the additional documents and information requested from the insurer or reinsurer have not been submitted within the time limit set by the supervisory authority, the supervisory authority shall terminate the examination of the application and inform the insurer or reinsurer within 10 working days of the expiry of the time limit for completing the set.

27. The supervisory authority shall refuse to issue the prior approval if:

1) the application for prior approval or any of the information or documents submitted by the insurer or reinsurer for prior approval does not meet the requirements of this Regulation, contains erroneous information or is submitted in incomplete volume;

2) the insurer or reinsurer will be exposed to risks threatening its solvency and liquidity when concluding the transaction/carrying out the intended investment;

3) the transaction/investment is detrimental to the interests of policyholders and other creditors of the insurer or reinsurer;

4) the insurer or reinsurer fails to demonstrate the profitability and return of entering into the transaction/investment.

28. The prior approval, issued in accordance with this Regulation, does not exclude the insurer's or reinsurer's obligation to comply with the prudential rules laid down in the regulatory acts corresponding to the activity carried on by the insurer or reinsurer.

29. The supervisory authority may withdraw the prior approval if the objective of the transaction is not achieved within the timeframe envisaged by the insurer or reinsurer or due to the occurrence of the grounds for refusal set out in paragraph 27.

30. The supervisory authority shall issue a notification revoking the prior approval and shall request, in writing, information from the insurer or reinsurer about the non-achievement of the proposed objective in initiating the transaction, as well as explanations as to whether there are grounds for incompatibility in carrying out the transaction.

31. The insurer or reinsurer shall have a period of 30 days from receipt of the notification from the supervisory authority revoking the prior approval to liquidate any incompatibilities referred to in the notification.

32. If the insurer or reinsurer does not remove the incompatibilities that have arisen, and if it does not meet the conditions laid down in this Regulation, the supervisory authority shall issue the decision to revoke the prior approval, stating the grounds on which it is withdrawn.

33. After the prior approval has been withdrawn, the relevant management body of the insurer or reinsurer shall, within 60 days, review its position on the transaction/investment and adopt a decision to that effect.

Chapter IV
REQUIREMENTS FOR KEEPING THE REGISTER OF GUARANTEES,
COMMITMENTS AND
OTHER OBLIGATIONS OF THE INSURER OR REINSURER

34. The insurer or reinsurer shall record its guarantees, commitments and other obligations not reflected in the balance sheet in the Insurer's or Reinsurer's Register of Guarantees, commitments and other obligations in the form set out in the Annex to this Regulation.

35. The insurer or reinsurer shall, within 5 days from the date on which it assumed the guarantee, commitment or other obligation not reflected in the balance sheet, inform the supervisory authority by submitting an extract from the Register of guarantees, commitments and other obligations of the insurer or reinsurer in its required format.

36. The primary documents relating to the records in the Insurer's or Reinsurer's Register of guarantees, commitments and other obligations shall be kept in separate files.

37. The form of the Register of guarantees, commitments and other obligations of the insurer or the reinsurer and the method of its completion are set out in the Annex of this Regulation.

Annex
to the Regulation on time limits, procedure and methods
for issuing approvals regarding transactions,
requirements for keeping the Register of guarantees,
commitments, and other obligations of the insurer or reinsurer

name of the insurer or reinsurer

REGISTER
of guarantees, commitments, and other obligations
of the insurer or reinsurer

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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
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METHOD OF COMPLETION
the Register of guarantees, commitments and other obligations

of the insurer or reinsurer

- 1.** Column 2 shall indicate the date of establishment the guarantee, commitment and other obligations.
- 2.** Column 3 shall indicate the number of the legal act involving the guaranteed person and shall be completed only if such a legal act was concluded.
- 3.** Column 4 shall indicate the duration in days of the guarantee, commitment and other obligation. If the term of the guarantee, commitment or other obligation is extended, a new entry shall be made in the Register in chronological order.
- 4.** Columns 5 and 8 shall indicate the Name, Surname of the guaranteed person and the person to whom the guarantee was provided, respectively.
- 5.** Columns 6 and 9 shall indicate the IDNO/IDNP of the guaranteed person and IDNO/ IDNP of the person to whom the guarantee was provided, respectively.
- 6.** Columns 7 and 10 shall indicate the country of residence of the guaranteed person and of the person to whom the guarantee was provided (the state in which the person holds registration or citizenship).
- 7.** Column 11 shall give information on the nature of the transaction, e.g., bank credit, etc.
- 8.** Column 12 shall give information on the nature of the guarantee, commitment or other obligation, e.g. pledge, mortgage, pawnshop, surety bonds, etc.
- 9.** Column 13 shall indicate the amount in MDL of the guarantee, commitment and other obligation to the guaranteed person.
- 10.** Column 14 shall list the pledged assets, e.g., real estate, land, goods, bank deposit, securities, etc.
- 11.** Column 15 shall indicate the address – for real estate, land or property, bank – for deposits, issuer – fore securities, etc., of the pledged assets.
- 12.** Column 16 shall indicate the value in MDL of pledged assets, the total being the sum of the values of such assets.