

GOVERNMENT NOTICE NO. 32

INSURANCE ACT

(NO. 9 OF 2010)

INSURANCE (MINIMUM CAPITAL AND SOLVENCY REQUIREMENTS FOR
GENERAL INSURERS) DIRECTIVE, 2010

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IN EXERCISE of the Powers conferred by section 13 of the Insurance Act, 2010, the Registrar has issued the following Directive—

PART I—PRELIMINARY

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| Citation | 1. This Directive may be cited as the Insurance (Minimum Capital and Solvency Requirements for General Insurers) Directive, 2010. |
| Application | 2. This Directive shall apply to all licensed and registered financial institutions transacting general insurance business in Malawi. |
| Interpretation | 3. In this Directive, unless the context otherwise requires—
<p style="margin-left: 20px;">“adjusted net assets” means net assets as specified in Form G1 (Balance Sheet) of the Registrar’s Call Report, less inadmissible assets, discounted assets, adjustments for weighted policyholders reserves and discounted capital items;</p> <p style="margin-left: 20px;">“capital adequacy” means the maintaining of sufficient core capital as is specified in this Directive;</p> |

“core capital” consists of paid-up ordinary shares and the following disclosed reserves:

- (a) retained profits from previous years;
- (b) share premiums;
- (c) 80% of after-tax profits in the current year-to-date or 100% in the event of loss less investments in other companies,

but does not include revaluation reserves;

“directives on prudential guidelines” means the directives issued by the Registrar with regard to reserving requirements and treatment of non-performing assets, and income recognition of such non-performing assets;

“discounted assets” means admissible assets that are risk weighted for purposes of solvency calculations;

“general insurance business” means the business of assuming obligations as an insurer in a class of insurance business which excludes life insurance business;

“impaired capital” means a solvency deficiency to the extent of endangering policyholders and other creditors;

“inadmissible assets” means assets that are not allowable by the Registrar for purposes of calculating solvency;

“insurer” means a licensed insurance company authorized to conduct general insurance business;

“minimum capital requirement (MCR)” means required level of capital, for regulatory purposes, that each insurer must maintain to enable them sufficiently meet insurance obligations under a wide range of circumstances;

“Registrar” means the Registrar of Financial Institutions appointed under the Financial Services Act, 2010;

Act No. 26 of
2010

“related parties” means a person who—

(a) has a significant interest, directly or indirectly, in a class of shares of the insurer;

(b) is a director or officer of the entity that controls the insurer;

(c) is a spouse or a family member of the person mentioned in subparagraph (a) or (b);

(d) is an entity in which a director or officer of the insurer or person that controls the insurer has a significant investment; or

(e) is an entity in which a spouse or a family member of a person described in subparagraph (d) has a significant investment.

“revaluation reserve” means the increase in book value of a fixed asset or other tangible asset based on a professional appraisal as to the market value of such asset;

“significant interest” in relation to “related parties” means a person who, in his personal capacity, or through entities controlled by him, owns more than ten per cent (10%) of all the outstanding shares of any one class;

“solvency deficiency” means failure to meet the solvency requirements of this Directive;

“solvency margin” means the minimum amount of adjusted net assets that must be held by a general insurer; and

“supplementary capital” means capital instruments that have characteristics of equity and debt (hybrid), able to support losses on an on-going basis without triggering liquidation, are unsecured, subordinated, and fully paid-up.

PART II—STATEMENT OF POLICY

Objectives

4. The objectives of this Directive include—

(a) to protect the interests of policyholders, creditors, and the general public against risk of loss that may arise out of the insurer’s business activities;

(b) to help ensure that general insurers have an adequate cushion of net assets to absorb losses beyond the coverage of their technical reserves;

(c) to help general insurers grow their capital base so as to enable the industry develop the required capacity to underwrite large risks arising within Malawi thereby assist in conserving valuable national foreign currency reserves;

(d) to ensure that general insurers maintain internationally recognized capital and solvency standards;

(e) to promote self-discipline in the management of insurance companies and emphasize the fact that it is the responsibility of an insurer’s board and senior management to ensure that the insurer’s capital resources are appropriate to size, business mix and complexity of its business;

Rationale

5. This Directive is issued on the basis that—

(a) sufficient margin of solvency enables insurers to have the needed cushion to absorb adverse events either within their control or due to external factors to prevent insolvency or an unsound position; and

(b) insurers need to maintain a specified level of net assets to promote public confidence and to protect policyholders’ interest.

PART III—CAPITAL AND SOLVENCY REQUIREMENTS

Minimum Capital and Solvency Requirement

6.—(1) The minimum paid-up capital for a general insurer shall be fifty million Kwacha (K50,000,000).

(2) An insurer shall be deemed to have sufficient margin of solvency if—

(a) it has a solvency ratio of no less than twenty per cent (20%) being the percentage that adjusted net assets of the insurer bears to the net premium written (NPW) for the corresponding period; and

(b) the value of the core capital of the insurer is not less than fifty million Kwacha (K50,000,000).

(3) The solvency margin shall be represented by the following adjusted net assets—

(a) net assets (total assets minus total liabilities) as per Form G1 (Balance Sheet);

(b) less inadmissible assets;

(c) less adjustment for discounted assets;

(d) less weighted policyholders' reserves; and

(e) less adjustment on capital items.

(4) If the adjusted net assets of the insurer as calculated in 3 above is less than twenty per cent (20%) of NPW or if its core capital is less than fifty million Kwacha (K50,000,000), then the insurer has insufficient capital to meet the solvency margin requirement and shall therefore be deemed insolvent unless capital is immediately injected into the company.

7.—(1) The following assets shall not be included in the solvency margin, and are therefore inadmissible for the purposes of calculating the insurance company's solvency margin—

(a) intangible assets;

(b) loans to, or any amounts due from, related companies or related parties;

(c) investments in other companies;

(d) loans to insurance brokers and insurance agents;

(e) loans overdue more than 180 days, including;

(f) earned premiums overdue by more than 180 days;

(g) inward reinsurance overdue by more than 180 days;

(h) reinsurance recoveries overdue by more than 180 days;

(i) amounts secured or pledged on any asset or assets;

(j) merchandise inventory; and

(k) prepaid expenses.

(2) The following admissible assets are to be discounted as follows—

(a) cash, and bank balances, 0%;

(b) government securities, 0%;

(c) term deposits, 0%;

(d) corporate bonds, 5%;

(e) real estate mortgages, 5%;

(f) shares in listed companies, 10%;

Inadmissibility
and discount-
ing of assets
and other
capital
instruments

- (g) commercial loans, 15%;
- (h) direct real estate investments, owner occupied, 15%;
- (i) direct real estate investments rented to third parties, 20%;
- (j) shares in companies not listed on the stock market, 20%;
- (k) receivables outstanding >90 days but <180 days, 20%;
- (l) non-current assets (including both movable and immovable non current assets, excluding intangibles), 20%; and
- (m) other loans to third parties, 20%.

(3) The following policyholder reserves are to be weighted as follows---

- (a) unearned premiums, 5%;
- (b) outstanding claims, 10%; and
- (c) IBNR, 15%.

(4) The following capital items shall be discounted as follows

- (a) Current year after tax profits, 20%; and
- (b) Supplementary capital items, 50%.

Unrealized gains in value of fixed assets and financial instruments

8.--(1) Unrealized gains on the value of fixed assets shall be reported to the revaluation reserve account.

(2) Unrealized gains in the value of financial assets such as shares, bonds, shall be deferred to the revaluation reserve account which is non-distributable and not reported to the retained earnings account.

(3) An insurer shall make sure that any anomaly in the reporting of unrealized gains in the value of such financial assets is immediately corrected as provided in paragraph 2.

Treatment of investment in equities

9.--(1) Where investment in shares of other companies constitutes twenty five per cent (25%) or less of the paid-up capital of the company in which the investment is made, the investment shall be discounted based on whether the shares are traded on the stock market as set out in items 6 and 7 of table 2.2 of Form G4 in the Schedule hereto.

(2) Where investment in shares of other companies constitutes more than twenty five per cent (25%) of the paid-up capital of the company in which the investment is made, the investment shall not be admitted for solvency calculations, whether the shares are traded on the stock market or not as set out in item 2 of table 2.1 of Form G4 in the Schedule hereto.

(3) Where investment in shares of other companies constitutes more than twenty five per cent of the paid-up capital of the company in which the investment is made, the initial investment and any other outlays by the insurer shall be deducted from the core capital of the insurer as set out in item 6 of table 1 in Form G4 in the Schedule hereto.

Inspection and verification of accuracy

10.--(1) All assets shall be held by the insurer at all times and shall be transferred out to any other person or group, including a related party or head office.

(2) Each insurer shall require its auditor, as appointed under section 56 of the Financial Services Act, 2010, to verify the accuracy of Form G4 in the Schedule hereto computations as of the financial year-end date and to so alert the Registrar of any errors or adjustments to this form as of any other quarter end period during the financial year under review. Act No. 26 of 2010

(3) In determining the computation for capital adequacy and solvency requirements, the Registrar shall assess if the insurer is in compliance with its directives on prudential guidelines and reserving requirements, and as such, it shall determine if the insurer has made adequate provisions for all technical reserves and bad debts and followed proper guidelines with regard to income recognition, specifically accrual of premium income and reserving methodologies.

(4) The Registrar may call for adjustments to capital and solvency calculations with respect to increased provisions or premium income accrual if an insurer is found not to be in compliance with the two directives.

PART IV--ADMINISTRATIVE SANCTIONS

11. An insurer shall be solvent at all times. If the insurer becomes insolvent at any time, the insurer shall immediately -- Remedial measures

(a) advise the Registrar;

(b) cease writing any new business until such time as the Registrar is satisfied that the insurer is solvent; and

(c) submit, for approval, a plan to the Registrar on how it intends to rectify the insolvency position.

12. If the plan submitted pursuant to paragraph 11 is not approved by the Registrar, or the insurer fails to implement the plan within the specified period, the Registrar will take any or all of the following actions--- Administrative sanctions

(a) cause a press release that the insurer is closed to any new business;

(b) prohibit the declaration or payment of dividends;

(c) disqualify, remove or suspend any person, including a director and senior management from the management of, or participation in, the affairs of the insurer;

(d) appoint a statutory manager;

(e) petition the court for a winding-up order of the insurer; and

(f) transfer the insurer's business to another insurer.

SCHEDULE

(para. 9, 10)

FORM G4

CAPITAL ADEQUACY AND SOLVENCY REPORT--GENERAL INSURANCE BUSINESS

For the Quarter/Year ended:

Name of Insurer:

Table 1: Minimum Capital Requirements Test

<i>Item</i>	<i>Amount (MK '000)</i>
1. Minimum core capital required	50,000
2. Paid-up Capital	
3. Share Premium	
4. Retaining Earnings (prior years)	
5. 80% Current year after tax profit (100% for audited year end profit)	
6. Less Investment in other companies	
7. TOTAL CORE CAPITAL (add item 2 to 5 minus item 6)	
● MINIMUM CAPITAL TEST = 7-1	

Table 2: Solvency Margin Test

<i>Item</i>	<i>Amount (MK '000)</i>
1. Net Premium Written (NPW)	
2. Solvency Required: at least 20% of item 1	
Represented by:	
3. Net assets (i.e. Total capital) as per form G1	
4. Less inadmissible assets as per Table 2.1 below	
5. Less discounted assets as per Table 2.2 below	
6. Less weighted policyholders' reserves as per Table 2.3 below	
7. Less discounted capital items as per Table 2.4 below	
8. NET ASSETS available to meet solvency (items 3, 4, 5, 6 and 7)	
SOLVENCY RATIO (Item 8 divided by item 1) x 100	
SOLVENCY MARGIN TEST (Item 9 less item 2)	

Table 2.1: Inadmissible Assets

<i>Item</i>	<i>Amount (MK'000)</i>
1. Intangible assets	
2. Investments in other companies	
3. Portion of any asset pledged	
4. Loans to related corporations	
5. Loans to insurance brokes and insurance agents	
6. Earned premiums overdue >180 days	
7. Inwards reinsurance overdue >180 days	
8. Reinsurance recoveries overdue >180 days	
9. Other loans to third parties overdue >180 days	
10. Merchandise inventory	
11. Prepaid expenses	
12. TOTAL—Transfer to item 4 in Table 2	

Table 2.2: Discounted Admissible Assets

<i>Item</i>	<i>Total Amount (MK'000)</i>	<i>Discount Rate (%)</i>	<i>Inadmissible Amount (MK'000)</i>
1. Corporate bonds		5%	
2. Real estate mortgages		5%	
3. Direct real estate investements, owner occupied		15%	
4. Direct real estate investments, rented to third parties		20%	
5. Commercial loans		15%	
6. Shares in listed companies		10%	
7. Shares not listed on stock exchange market		20%	
8. Recievables outstanding >90 days but < 180 days		20%	
9. Non-current assets		20%	
10. Other loans to third parties		20%	
11. TOTAL—Transfer to item 5 in Table 2			

Table 2.3: Weighted Policyholders' Reserves

<i>Item</i>	<i>Total Amount (MK'000)</i>	<i>Discount Rate (%)</i>	<i>Inadmissible Amount (MK'000)</i>
1. Unearned premium reserves		5%	
2. Outstanding claims		10%	
3. IBNR		15%	
4. TOTAL --Transfer to item 6 in Table 2			

Table 2.4: Discounted Capital Items

<i>Item</i>	<i>Total Amount (MK'000)</i>	<i>Discount Rate (%)</i>	<i>Inadmissible Amount (MK'000)</i>
1. Current year after tax profit		20%	
2. Supplementary capital items		50%	
2. TOTAL ---Transfer to item 7 in Table 2			

Date:

.....
Chairman.....
Principal Officer.....
Finance Manager/External Auditor

Made this 6th day of December, 2010.

(FILE NO. M/F/2/10)

DR. PERKS LIGOYA
Registrar