



Banking and Payments Authority of Kosovo

Pursuant to the authority given under Section 17.b of UNMIK Regulation No. 2001/24 date of October 1, 2001 on Amending UNMIK Regulation No. 1999/20, on Banking and Payments Authority of Kosovo and Section 3.3 of UNMIK Regulation No.2001/25 date of October 5, 2001 on Licensing, Supervision and Regulation of Insurance Companies and Insurance intermediaries,

For the purpose of execution Section 74 of UNMIK Regulation Nr. 2001/25

Governing Board of the Banking and Payment Authority of Kosovo, at the meeting held on March 28, 2002 adopt the following:

Rule 30 of the Validity and Amount of Policyholders' and Creditors Claims, in Liquidation

Section 1

1. Scope of Rule

This rule applies to all insurance companies and insurance intermediaries licensed by the BPK.

2. Legal Authority

This rule implements Section 74, Chapter XI (Receivership) of the Insurance Regulations. The determination of the validity and amount of claims to be paid to the policyholder and other creditors of a company under receivership and liquidation is very essential in order to afford maximum consumer protection and to avoid further damage to the stability of the insurance industry in Kosovo. Under these premises, BPK prescribes this Rule.

3. Definitions

In this rule, the following terms mean:

“Company in liquidation” or “company in receivership” refers to a licensed company that the BPK orders to be wound-up or liquidated because of insolvency or the voluntary application of a company for liquidation approved by the BPK.

“Company” refers to either, or both, insurance company or insurance intermediary company under the supervision of the BPK including those falling under the direct supervision of another jurisdiction that is (are) authorized by the BPK to carry on insurance business in Kosovo.

“General assets” or “general fund”, means all property, real or personal, or otherwise, not specifically mortgaged, pledged, deposited or otherwise encumbered for the security and benefit of specified persons or class or classes of persons. The proceeds of encumbered assets in excess of the amount of the liability secured thereby is included in the term general assets.

“Prioritized claim” or “preferred claim” means any claim or class or classes of claim with respect to which the Insurance Regulations and this Rule accord priority of payment from the general assets of the company in liquidation.

“Insolvency” is the financial condition of a company where it can no longer meet its obligations.

“Secured claim” means any claim secured by a mortgage, deed, pledge, security, escrow or any other encumbrance upon specific asset of the company.

“Receiver” is a person appointed by the BPK, in its behalf, to take control and administration of the assets of an insolvent company or a company under liquidation and to liquidate those assets to pay for valid obligations of and claims against the company under receivership. Unless context means otherwise, the term receiver includes “liquidator”, “rehabilitator” or “conservator”.

“Unliquidated claim”, means a claim or demand founded upon a right of action accrued at the time the order of receivership is entered and upon which the liability of the company has not been determined or the amount thereof paid or liquidated.

Section 2

Priority of Claims and Determination of Validity of Claims

1. Section 74 of the Insurance Regulations

Section 74 of the Insurance Regulations prescribes the priority or preference, determined by class, in the payment of claims against a company in liquidation in the following order of priority:

- a) Secured claims.
- b) Necessary and reasonable expenses incurred by the receiver and the

BPK, including professional fees, in the receivership.

- c) Reasonable salaries and social insurance benefits due to employees and incurred up to two (2) months prior to the initiation of receivership.
- d) Legitimate outstanding insurance policy claims.
- e) Unearned premiums.
- f) Taxes and duties coming due within one (1) year prior to the receivership.
- g) Other creditors and the unsecured portions of secured claims, if any.

The receiver shall group all valid claims consistent with the foregoing class or classes. Such grouping shall be the basis for the order of priority or preference of payment.

2. Determination of the Validity of a Claim

To be valid and considered for payment, a claim:

- a) Must be filed within the time and manner prescribed under this Rule.
- b) The nature and amount of the claim reasonably corresponds to the records of the company in liquidation, if available.
- c) If the claim is not traceable from the records of the company, or if the records available are inadequate to determine its validity, the receiver shall require the claimant to submit, within a specified period of time, such evidences proving that the claim is justly owed by the company and rightfully payable to the claimant.
- d) The BPK may, at its discretion, rule on the validity of any claim for which it considers to have been reasonably filed and submitted.

3. Notification Requirements

The receiver shall notify all creditors and potential claimants against the assets of a company in liquidation by publication under the following guidelines:

- a) At least once in four (4) consecutive weeks, in newspapers of general circulation, in such areas as the BPK shall prescribe, and/or, at the discretion of the BPK, in the radio and television (broadcast) media.
- b) All claims against the company, to be considered for payment, must be

filed with the receiver or the BPK, within a period of ninety (90) days following the last date of the series of publications made according to subparagraph a) above. The notification shall clearly specify this condition.

- b) All claims, to be considered for payment, must be submitted in substantial conformity to the requirements prescribed by the BPK for filing a claim.

4. Form and Contents of Claim.

A claim form can be obtained from the receiver or from the BPK. A claim filed under this rule must be under oath setting forth the following particulars:

- a) The amount and details of the claim.
- b) Whether said claim is secured or unsecured and, if secured, the nature and amount of the security.
- c) The payments made thereon by the company in liquidation, if any.
- d) That the amount claimed is justly owed by the company and rightfully due to the claimant.
- e) That there is no agreement of offset involving or applicable to the claim.
- f) Such other details that the BPK may require.

5. Filing of Unliquidated Claims.

- a) Notwithstanding the non-determination of the amount of the claim, any claim or demand founded upon unliquidated claim must be filed within the time prescribed under sub-section 3, and submitted consistent with the requirements for filing a claim under sub-section 4, of this Section.
- b) A third party claim that is unsettled at the time the order of receivership entered into effect must be filed as unliquidated claim.
- c) No payment of unliquidated claim can be obtained until the nature and amount of the claim are determined and is properly grouped in the appropriate class of priority or preference of payment on the basis of which the claim is to be paid.

6. Valid Claims Without Need of Filing

Subject to the determination of the amount of the claim, as applicable, pursuant to Section 3 of this Rule, the following claims are considered valid and will be

paid according to their class of priority or preference notwithstanding the filing or non-filing of a claim required under this Rule:

- a) Claims for the return of premium including the right of duly constituted assignee(s) thereof to receive them.
- b) The unpaid portion of policy benefits for which the company has commenced payment prior to the date of receivership.
- c) Claims founded upon unearned premiums.
- d) Claims due the government of Kosovo for taxes and duties due within one (1) prior to the receivership.
- e) All other claims that the BPK reasonably determines as similar to the foregoing.

Section 3 Determination of the Amount of Claim

1. Secured Claims

The determination of the amount of a secured claim is based on the following guidelines:

- a) The claim of a secured claimant shall not be greater in amount than the value of the underlying security.
- b) A secured claimant may surrender the security to the receiver, in which case the claimant is entitled to payment equal to the value of the security or the amount claimed, whichever is lesser. An appraiser appointed by the receiver and approved by the BPK shall determine the value of the security.
- c) The accrual of interest on a secured claim ceases as of the date of the receivership.
- d) Any portion of a secured claim that remains unpaid by its underlying security shall be considered filed as an unsecured claim and shall be disposed of according to its class in the order of priority or preference of payment.

2. Legitimate Outstanding Insurance Policy Claims and Unearned Premiums

- a) General Insurance Company. The outstanding insurance policy claims of a general insurance company consists of following claims and for such amounts determined under the following guidelines:
- (i) Claims incurred and settled before the date of receivership for which periodic payments thereof is in effect at such date. The amount of the claim shall be determined by actuarial calculation, or the discounted value of all unpaid periodic payments, upon such methods determined as reasonable by the BPK.
 - (ii) Claims incurred and settled before the date of receivership but unpaid as of such date. The claim is equal to the amount so settled.
 - (iii) Claims incurred as of the receivership date but not yet reported as of that date (IBNR). The adjuster or claims expert appointed by the receiver for that purpose would determine the amount of the claim.
 - (iv) Refund or return of premium. If the policy gives the parties the right to cancel, the policy is deemed cancelled on the date of the receivership. The amount of claim is the unexpired portion of the premium determined by using the "short period scale" formula adopted by the company.
 - (v) Unearned premium. If the terms of the policy is from one definite date through another definite date and can only be terminated by either party with effect from a definite date, the amount of claim is the proportion of the last premium paid as is the proportion of the unexpired portion of the period for which the premium was paid.
 - (vi) In all other cases, the best estimates of that value.
- b) Life Insurance Company. The outstanding insurance policy claims of a life insurance company consists of the following claims and for such amounts determined under the following guidelines:
- (i) Matured benefits at or prior to the date of receivership for which periodic payments thereof is in effect as of such date. The value of the claim is determined by actuarial calculation or the discounted value of all unpaid future periodic payments upon such methods determined by the BPK as reasonable.
 - (ii) Death or matured benefits incurred prior to the date of receivership but which payment has not been determined or made as of such date. The amount of the claim is the amount of the benefit.

(iii) Policy benefits. In valuing policy benefits for life insurance policy in force as of the date of receivership, the receiver shall appoint an independent actuary, approved by the BPK, who shall determine the amount representing the value of policy benefits applicable to the force policies of the company. The actuary shall determine the individual values of all policies in force upon such methods and assumptions approved by the BPK. The valuation made by the actuary when approved by the BPK is the value of policy benefits of the in force policies of the company.

3. All Other Claims

The receiver shall determine the values of all other claims in accordance with the following guidelines:

- a) All claims founded upon a contract or obligation for which the company pays for interest, rent, dividend, or other fixed charges shall be valued at the amount of principal plus interest as of the date of receivership. All interest, rent, dividend, or fixed charges accruing at or after the date of receivership cease to accrue.
- b) Amounts due to reinsurers (other than for amounts secured by funds withheld from the company), agents, sub-agents or brokers, are considered as unsecured obligations of the company.
- c) The values of claims falling under this sub-section is determined by the receiver after taking into account their validity in accordance with Section 2 of this Rule. The amount of the claim shall be based from the records of the company and/or from proofs or evidences submitted by the claimant. In any other case, the reasonable estimate of the value by the receiver.
- d) In the case of an unliquidated third party claim under the compulsory motor vehicle third party liability insurance, the receiver shall forward the claim to the Guarantee Fund. The Guarantee Fund shall determine the value of the claim and submits its unsecured claim therefore, to the receiver.
- e) In the case of third party claim not covered under the Guarantee Fund, the receiver, if reasonably convinced that the claimant has a legitimate cause of action and without waiting for the liability to be reduced to judgment by a competent court, may enter into a compromised settlement with the claimant. The amount so agreed is the amount of the claim.
- f) In the case of several third party claimants having a total claim exceeding the limits of the policy and where the claim of anyone of them remains undetermined, the entire claim will be considered as unliquidated claim.

g) A judgment taken by default or by collusion, against an insured, shall not be considered as proof or evidence of a claim against the company in liquidation, either for the liability of such insured to the claimant or for damages awarded to the claimant.

h) Award for damages against a company in liquidation upon a judgment entered on or after the date of receivership shall not be considered.

i) A death benefit claim occurring after the date of receivership, which is not be reasonably expected to be filed with the receiver within the time prescribed in this Rule, shall be filed with the receiver or the BPK during liquidation. BPK shall determine its validity and amount and shall order its payment based on the order of priority if the remaining general assets of the company is still adequate to pay for the claim.

Section 4 Invalid Priority or Preference

1. Voidable Priority or Preference

The receiver may set aside the following transactions made by the company in liquidation and shall avail of all legal remedies to recover assets transferred thereby or to void any liability created therefrom:

- a) Transactions entered within one (1) year before the order of receivership involving:
 - (i) Transfer or conveyance of property belonging to the company.
 - (ii) The creation of a lien or encumbrance against any property of the company.
 - (iii) The entry of judgment against the company.
- b) Transactions, of the nature of paragraph a) above, entered into by the company within (1) year before the company is placed by the BPK under conservation or rehabilitation or within two (2) years prior to an order of receivership, whichever period is shorter.
- c) Transactions involving a transfer of property or the creation of a lien or encumbrance on a property belonging to the company, if:
 - (i) Made within 6 months prior to the date of receivership.

(ii) The creditor receiving the transfer or benefiting from the lien or encumbrance or his agent, acting with reference thereto, had reasonable cause to believe that the company is insolvent or is about to be insolvent.

(iii) The creditor receiving the transfer or benefiting from the lien or encumbrance is a related party, pursuant to Rule 56 of these rules, of the company.

- d) Where the priority or preference is voidable, the receiver may recover the property or, if it has been converted, its value from any person who received or converted the property. If the transfer, lien or encumbrance was bona fide but the transferor or lienor has given a consideration less than its equivalent fair value, the transferor or lienor shall have a secured claim to the extent of the consideration actually given.

2. Fraudulent Transfers

Every transfer made and every obligation incurred by the company in liquidation within one (1) year prior to the date of receivership is fraudulent as to the existing and future creditors of the company if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. The receiver or the BPK may take all legal remedies to proceed against the persons involved in such fraudulent transfers.

Section 5 Entry into Force

This present rule shall enter into force on April 1, 2002.

David Weatherman
Acting Managing Director