

## Insurance Act 2079 (2022 A.D.)

### Introduction

The newly enacted Insurance Act 2079 (2022 A.D.) (“Insurance Act”), which is the primary law governing insurance business in Nepal, received the President’s assent on October 9, 2022 and came into effect on the 31<sup>st</sup> day of authentication, i.e., November 8, 2022. Insurance Act has repealed prior Insurance Act 2049 (1992 A.D.) (“Prior Insurance Act”).

This Briefing aims to highlight major provisions of Insurance Act primarily applicable to foreign insurance companies in engaging insurance business in Nepal.

### Insurance Business

Insurance Act classifies ‘insurance business’ primarily into following three (3) categories:

- life insurance business
- non-life insurance business
- re-insurance business

Other insurance related businesses are classified as following:

- insurance broker
- insurance agent
- insurance surveyor
- third-party facilitator
- other licensed insurance intermediaries

### Regulatory Body

The insurance business is regulated by Nepal Insurance Authority (“NIA”), an autonomous statutory body, which is a successor of prior Insurance Board. NIA has the primary responsibility of regulating insurance business,

such as, granting pre-approvals, issuing licenses, and formulating By-Laws, Directives, Guidelines, etc. in insurance sector.

### Modes of Doing Business/Presence

There are mainly two (2) modes of operating insurance business – by incorporating a new company or establishing a branch office.

#### *Incorporation of a New Company*

A person or entity who wishes to engage in insurance business may incorporate a company after obtaining a pre-approval and a license from NIA.

A foreign insurance company that wishes to engage in insurance business may incorporate a subsidiary company by entering into a joint venture with a local company or individual(s) after obtaining a pre-approval and a license from NIA.

#### *Establishing a Branch Office*

A foreign insurance company may engage in insurance business by establishing a branch office in Nepal after obtaining a pre-approval and a license from NIA.

#### *Liaison Office*

A foreign insurance company may set up a liaison office by obtaining a pre-approval from NIA. A liaison office, however, is not permitted to operate insurance business. A liaison office is permitted to engage in limited non-income-generating activities, such as, corresponding on behalf of its parent company, providing assistance on behalf of its parent company, coordinating with agents of its parent company, etc.

## Licensing Procedure

A license must be obtained from NIA to engage in insurance business. There are primarily four (4) stages for obtaining a license and operating insurance business in Nepal.

### *Phase I: Pre-Approval Phase*

Nepali citizens or entities desirous of operating insurance business must first obtain a pre-approval from NIA to incorporate a new company, for which an application and required documents must be submitted to NIA.

Similarly, a foreign insurance company that wishes to engage in insurance business must first obtain a pre-approval from NIA to incorporate a company or establish a branch office in Nepal for which an application and required documents must be submitted to NIA. However, in order to incorporate a new company, the foreign insurance company must either enter into a joint venture with a local company or individual(s).

NIA reserves the right to decline to grant pre-approval to an applicant for incorporation of an insurance company or a branch office for certain prescribed grounds, among others, public policy, likelihood of unfair competition in insurance sector, etc.

### *Phase II: Incorporation/Establishment Phase*

Upon obtaining a pre-approval from NIA, one of the following steps must be taken in accordance with the prevailing company laws:

- incorporation of a company as a public limited company
- register a branch office

### *Phase III: License Application Phase*

A company incorporated or a branch office registered after obtaining pre-approval from NIA must again submit an application to NIA to obtain a license to engage in insurance business. While submitting an application, the company or branch office must also submit various prescribed documents.

### *Phase IV: Licensing Phase*

NIA shall grant a license to an applicant within sixty (60) days if the former determines that the

latter is competent to conduct insurance business. In case where necessary, while granting a license, NIA may impose conditions in the license. Unless specified otherwise, a license shall be effective from the date of issuance. An insurance license cannot be transferred from the applicant company to another entity.

All prior insurance licenses issued by the Insurance Board under the Prior Insurance Act shall be deemed to have been issued by NIA.

NIA has the discretion to decline to grant a license to an applicant on following grounds:

- non submission of required documents;
- inadequate preparation of necessary infrastructures to conduct insurance business; or
- likelihood that the interest of insured would not be protected.

## Commencement of Insurance Business

An entity, which receives a license from NIA, must commence its business within six (6) months from the date of the issuance of the license. NIA may extend additional six (6) months if an insurance company submits an application for extension of time to commence insurance business and the former finds reasonable to do so.

## Capital Requirement

NIA is granted with the authority to prescribe the minimum paid-up capital of insurers. Considering the financial or the capital market situation of the country or the financial situation or the liability of an insurer, NIA may instruct an insurer to increase its paid-up capital. Failing to comply with the instruction of NIA, it is empowered to suspend the license of the insurer.

### *Distribution of Shares*

An insurer (except for a branch office of a foreign insurer) must allocate and distribute at least thirty (30) percent of the total issued capital to the general public, of which up to five (5) percent shares can be allocated and distributed to its employees.

### *Various Funds and Solvency Margin*

Insurers must maintain various types of funds, such as, Insurance Fund, Reserve Fund, Catastrophe Reserve, Claim Payment and Reserve Fund, etc. as prescribed by NIA. Further, insurers must also maintain Solvency Margin as prescribed by NIA for which an insurer's total assets must be greater than its total liabilities.

### **Foreign Insurance Companies and Insurance Business**

The draft of the Insurance Bill when tabled at the Parliament contained a provision intending to grant some leverages to foreign insurance companies allowing them to engage in insurance business in Nepal, albeit conditionally, without a license with respect to insurance business which is not: (i) insured by the local insurers; or (ii) licensed in Nepal.

Regrettably, that draft provision has been removed from the final Insurance Act. Consequently, foreign insurance companies are allowed to engage in insurance business in Nepal only after obtaining a license as described herein above.

### **Insurance Pool**

In order to cover particular types of risks, NIA may instruct insurers to establish or cause to establish a collective insurance pool.

### **Micro-insurance**

An insurer must also engage in micro-insurance business targeting to low-income individuals and deprived sectors. A micro-insurance is a type of insurance targeted to low-income individuals and people who are deprived economically, socially and geographically.

An insurance company may be incorporated to engage either in micro life insurance or in micro non-life insurance business.

### **Re-insurance Business**

It is a requisite for an insurer to reinsure the remaining risks apart from the risk assumed by it.

A re-insurer who is engaged in re-insurance business:

- may undertake re-insurance for both life and non-life insurance business;
- may undertake re-insurance from foreign insurance companies or re-insurance companies;
- may get reinsured from foreign re-insurance companies; or
- must reinsure its risk from the local re-insurers at least the minimum percentage prescribed by NIA.

### **Insurance Intermediaries**

Insurance Act classifies insurance agents, insurance surveyors, insurance brokers and third-party facilitators in a separate category of 'insurance intermediaries'. Persons or entities engaged in insurance-related activities other than as insurers or insurance intermediaries are classified as 'other insurance service providers'.

### *Licensing Requirement and Renewal*

A person or an entity that wishes to act as an insurance intermediary or other insurance service provider must obtain a license from NIA. Such a license is valid for three (3) years and can be renewed for another three (3) years at a time.

### **Distressed Insurers**

NIA may declare an insurer as a distressed insurer in the event the insurer fails to, among others, maintain the minimum paid-up capital or capital fund, solvency margin, or engages in an act of insurance fraud, etc.

Upon declaration as a distressed insurer, NIA may provide an opportunity to the insurer to perform certain corrective actions. In the event the distressed insurer fails to do so within the specified time, NIA shall form a Special Management Group which shall take over the management of the distressed insurer. The Special Management Group, upon improvement of the condition of the distressed insurer, may either handover the management to the previous board of directors or to a new board of directors after forming a new one. In the event that the condition of the distressed insurer does not

improve, the Special Management Group may recommend to NIA, among others, to initiate insolvency proceedings, merge with another insurer, cancel the license, etc.

### Settlement of Disputes

The Insurance Act envisages settlement of disputes among insurers, insurance intermediaries or other parties be done through arbitration under the auspices of NIA either upon a request from a party or by NIA's own initiation.

In addition, NIA has the authority to hear and adjudicate insurance related claims of insured against insurers.

### Merger and Transfer of Insurance Business

Though the Insurance Act prohibits from transferring a license from an insurer to another insurer, it has introduced a concept of transferring insurance portfolio from an insurer to another insurer. An insurer may transfer all or some of its insurance portfolios to another insurer operating in similar insurance business upon obtaining an approval from NIA.

Similarly, an insurer may merge with another insurer operating in the similar insurance business. Further, NIA is also empowered to give instructions to insurers for merger in certain situations, i.e., upon recommendation from the Special Management Group, financial, business or personal conflict among directors or incorporators of insurers.

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