

BOSNA I HERCEGOVINA
Konkurencijsko vijeće



БОСНА И ХЕРЦЕГОВИНА
Конкуренијски савјет

BOSNIA AND HERZEGOVINA
Council of Competition

**REGULATION
ON BLOCK EXAMPTION GRANTED TO INSURANCE AGREEMENTS**

**Sarajevo
December, 2005.**

Pursuant to Article 7., paragraph (1) item e) and Article 25., paragraph (1) item a) of the Competition Act («Official Gazette BiH» No. 48/05), the Council of Competition in its session held in December 2005, has adopted the following:

REGULATION ON BLOCK EXAMPTION GRANTED TO INSURANCE AGREEMENTS

I. GENERAL PROVISIONS

Article 1. *Subject matter*

This Regulation shall stipulate the conditions for block exemption granted to insurance agreements, set out conditions which such agreements must contain, the restrictions or conditions which such agreements may not contain, and other conditions which must be fulfilled in order to meet the conditions for block exemptions from application of the provisions on prohibited agreements set out pursuant to Article 4. of the Act on Competition (hereinafter: Act).

Article 2. *Applicability of the block exemptions*

- (1) Block exemption shall apply to insurance agreements laid down in Article 7., paragraph (1) item e) of the Act , entered into between two or more insurance undertakings within the insurance business, with respect to:
 - a) the joint establishment and distribution of calculations of the average cover costs of a specified risk in the past (hereinafter: calculations), the joint establishment and distribution of mortality tables, and tables showing the frequency of illness, accidents and invalidity within the insurance sector involving an element of capitalization (hereinafter: tables);
 - b) the joint carrying out of studies on the probable impact of general external circumstances on which the participating undertakings have no influence, relating to the frequency or number of future claims for reimbursement of a given risk or risk category or on the profitability of different types of investment (hereinafter: studies), that is, the distribution of the results of such studies;
 - c) the joint establishment and distribution of non-binding standard policy conditions for direct insurance (hereinafter: standard policy conditions);
 - d) the joint establishment and distribution of non-binding insurance types or models illustrating the profit which is to be realized from an insurance policy involving an element of capitalization (hereinafter: models);
 - e) the setting-up and operation of groups of insurance undertakings (hereinafter: co-insurance groups) or groups of insurance undertakings and reinsurance undertakings (hereinafter: co-reinsurance groups) for the joint coverage of a specific categories of risks in the form of joint co-insurance and co-reinsurance;
 - f) the establishment, recognition and distribution of technical specifications, rules or codes of practices concerning those types of security devices for which there are no technical specifications in the relevant market, classification systems, rules, procedures or codes of practice and the assessment and approval procedures on compliance of security devices with such specifications, rules or codes of practice (hereinafter: assessment on compliance of the security devices);
 - g) the establishment, recognition and distribution of technical specifications, rules and codes of practice for the installation and maintenance of security devices, and the assessment and approval of the undertakings installing or maintaining the security devices which are already brought into compliance with technical specifications, rules or codes of practice (hereinafter: assessment and approval of undertakings);

- (2) Standard policy conditions under paragraph (1) item c) of this Article refers to any clauses contained in model or reference insurance policies prepared jointly by insurers or by bodies or associations of insurers.
- (3) Co-insurance groups under paragraph (1) item e) of this Article means groups of insurers which agree to underwrite in the name and for the account of all the participants the insurance of a specified risk category; or entrust the underwriting and management of the insurance of a specified risk categories in their name and on their behalf to one of the insurer, to a joint broker or to a joint body set up for this purpose.
- (4) Co-reinsurance groups under paragraph (1) item e) of this Article means groups of insurers, one or more reinsurers have possibility of participating, established for the purpose of the mutual reinsurance of all or a part of their liabilities in respect of a specified risk category; and in some cases, the acceptance in the name and on behalf of all the participants the re-insurance of the same category of risks.
- (5) Security devices under paragraph (1) items f) and g) of this Regulation means all components and equipment designed for loss prevention and reduction, and systems formed from such elements.
- (6) Participating parties to the agreement means undertakings under paragraph (1) of this Article and their respective connected undertakings.

Article 3.
Inapplicability of block exemptions

According to the provisions of this Regulation block exemptions shall not apply to:

- a) insurance agreements which do not fulfill cumulative conditions laid down by Article 4., paragraph (3) of the Act and which have not been brought into compliance with this Regulation,
- b) insurance agreements the subject matter of which falls within the scope of another regulation pursuant to the provisions under Article 7. of the Act.

II. CONDITIONS THAT AGREEMENT MUST CONTAIN AND OTHER CONDITIONS FOR APPLICABILITY OF BLOCK EXEMPTIONS

Article 4.
Joint calculations, tables and studies

- (1) The block exemption provided for in Article 2., paragraph (1) item a) of this Regulation shall apply on condition that the calculations and /or tables:
 - a) are based on the assembly of numeral data, spread over the risk-years selected as an observation period, which relate to identical or comparable risks in sufficient number for statistical data processing for the period of time concerned. Statistical processing contains a data on the number of claims for reimbursement during the said period, the number of individual risks insured in each risk-year of the chosen observation period, the data on the total amounts paid or payable in respect of claims for reimbursement arisen during the said period, the data on the total amount of capital insured for each risk-year during the chosen observation period and other relevant data;
 - b) include as detailed a breakdown of the available statistics to the extent of actuarial possibility;
 - c) do not include in any way elements for potential contingency costs, income deriving from reserves, administrative or commercial costs or fiscal or para-fiscal contributions, and take into account neither revenue from investments or anticipated profits.
- (2) The block exemptions provided for in Article 2., paragraph (1), items a) and b) of this Regulation shall apply on condition that calculations, tables or study results:
 - a) do not identify the insurer or any insured parties;
 - b) when completed and distributed, include a non-binding statement;
 - c) are made available on reasonable and non-discriminatory terms, to any insurer which requires them, and to insurers which are not active on that relevant market.

Article 5.
Standard policy conditions and models

- (1) The block exemption provided for in Article 2., paragraph (1), item c) of this Regulation shall apply on condition that the standard policy conditions:
 - a) are established and distributed with an explicit statement that they are non-binding and that their use is not in any way recommended,
 - b) expressly arrange that participating parties to the agreement are free to offer different policy conditions to their customers; and
 - c) are available to any interested party and can be obtained upon request.
- (2) The block exemption provided for in Article 2., paragraph (1), item d) of this Regulation shall apply on condition that the non-binding models are established and distributed only by way of guidance.

Article 6.
Other conditions for exemption

- (1) The block exemptions provided for in Article 2., paragraph (1), item e) of this Regulation shall apply on condition that:
 - a) each party to the agreement has the right to withdraw from the co-insurance and /or co-reinsurance group, within the period of notice of not more than one year starting from a day of the submission of the statement of withdrawal, without incurring any sanction;
 - b) the rules of the co-insurance and/or co-reinsurance group, in whole or in part, do not oblige any member of the co-insurance group and/or co-reinsurance group to insure or re-insure any risk of the type covered by the group;
 - c) the rules of the co-insurance and/or co-reinsurance group do not restrict the activity of the group or its members to the insurance or reinsurance of risks located in any particular part of the relevant market;
 - d) the agreement does not limit production and sales;
 - e) the agreement does not allocate the markets or customers;
 - f) the members of a co-reinsurance group do not agree on the gross insurance premiums which they charge in direct insurance; and
 - g) no member of the co-insurance and/or co-reinsurance group, or undertaking which exercises a determining influence on the policy of the group, is also a member of, and/or exercises a determining influence on the policy of another co-insurance and /or co-reinsurance group active on the same relevant market.
- (2) Gross insurance premium under paragraph (1), item f) of this Article and Article 11, paragraph (1), item a) of this Regulation means the price which is charged to the purchaser of an insurance policy.

Article 7.
Security devices

The block exemptions provided for in Article 2., paragraph (1), items f) and g) of this Regulation shall apply on condition that:

- a) the technical specifications and procedures for the assessment of compliance of the security devices are precise, technically justified and in proportion to the performance effects which are to be attained by the security device concerned;
- b) the rules for the evaluation and approval of installation undertakings and/or maintenance undertakings are objective, relate to their technical and professional competence and are applied in a non-discriminatory manner;
- c) such technical specifications and rules are established and distributed with an expressly given statement that insurers are free to accept to insure, on whatever terms and

- conditions they wish, other security devices which do not comply with these technical specifications or rules;
- d) such specifications and rules are established and distributed with an expressly given statement that insurers are free to accept to insure, on whatever terms and conditions they wish, other undertakings installing and maintaining the security devices which do not comply with these technical specifications or rules;
 - e) such technical specifications and rules are provided upon request to any interested person;
 - f) any list of security devices and list of undertakings installing and maintaining those security devices, which is compliant with technical specifications includes a classification of security devices and undertakings based on the level of achieved results;
 - g) a request for an assessment of compliance of security devices or assessment and approval of undertakings may be submitted at any time by any applicant;
 - h) the evaluation of conformity under item g) of this paragraph does not impose on the applicant any expenses that are disproportionate to the costs of the approval procedure;
 - i) the security devices and undertakings installing and maintaining those security devices which satisfy the criteria on compliance assessment and criteria on assessment and approval of undertakings, get the certificate in a non-discriminatory manner within a period of six months of the date of application, except where technical considerations justify a reasonable additional period;
 - j) the fact of compliance or approval under item i) of this paragraph is certified in written;
 - k) the grounds for a refusal to issue the certificate of compliance and approval under item i) of this paragraph are given in writing by attached copies of the records of the tests and controls that have been carried out;
 - l) the grounds for a refusal to take into account a request for assessment under item i) of this paragraph are provided in writing; and
 - m) the technical specifications and rules are applied by the bodies accredited to norms.

Article 8.

Joint coverage of certain types of risks, market share and duration of block exemption

- (1) The block exemption granting to insurance agreements provided for in Article 2., paragraph (1), item e) of this Regulation shall apply to new co-insurance and co-reinsurance groups which are created after the date this Regulation enters into force in order to cover new risks for a period of three years from the date of the first establishment of the groups, regardless of the market shares of those groups.
- (2) The block exemptions provided for in Article 2., paragraph (1), item e) of this Regulation shall apply to co-insurance and co-reinsurance groups which do not fall within the scope of paragraph (1) of this Article, as long as the present Regulation remains in force, on condition that the insurance policies underwritten within the grouping arrangement by the participating undertakings or on their behalf do not, in any of the markets concerned, represent:
 - a) in the case of co-insurance, more than 20% of share in the relevant market;
 - b) in the case of co-reinsurance, more than 25% of share in the relevant market;
- (3) If the total market share of the co-insurance group referred to in the paragraph (2), item a) of this Article is initially not more than 20% but subsequently rises above this level without exceeding 22%, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which 20% of share of the co-insurance group was first exceeded.
- (4) If the market share of the co-insurance group referred to in the paragraph (2), item a) of this Article is initially not more than 20% but subsequently rises above 22%, the block exemptions shall continue to apply for one calendar year following the year in which the level of 22% of share of the co-insurance group was first exceeded.
- (5) The benefit of paragraphs (3) and (4) of this Article may not be combined so as to exceed a period of block exemption of two calendar years.
- (6) If the market share of the co-reinsurance group referred to in paragraph (2), item b) of this Article is initially not more than 25% but subsequently rises above this level without exceeding 27%, the

block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 25% of share of the co-reinsurance group was first exceeded.

- (7) If the market share of the co-reinsurance group referred to in paragraph (2), item b) of this Article is initially not more than 25% but subsequently rises above 27%, the block exemptions shall continue to apply for one calendar year following the year in which the level of 27% of share of the co-reinsurance group was first exceeded.
- (8) The benefit of the paragraph (6) and (7) of this Article may not be combined so as to exceed a period of block exemption of two calendar years.
- (9) «New risk» under paragraph (1) of this Article means risks which did not exist before, and for which insurance cover requires a new underwritten insurance policy. An amendment, improvement or replacement of an existing insurance policy may not be considered new risks.

Article 9.

Calculation of market share

- (1) The market share of the participating undertakings provided for in Article 8., paragraph (2) of this Regulation shall be calculated on the basis of the gross premium income of the insurance policies; if the gross premium income data are not available, estimates based on other reliable market information, including insurance cover provided or insured risk value, may be used to establish the market share of the undertakings concerned.
- (2) The market share under paragraph (1) of this Article shall be calculated on the basis of data relating to the calendar year preceding the conclusion of the agreement.
- (3) The market share under paragraph (1) of this Article shall be increased by the market shares of undertakings connected to the participating parties to the agreement realized as provided for in paragraphs (1) and (2) of this Article.

III. RESTRICTIONS AND CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Article 10.

Specific conditions which agreements may not contain

The block exemption provided for in Article 2. of this Regulation shall not apply where participating undertakings agree, impose or oblige other undertakings not to use calculations or tables that differ from those established pursuant to Article 2., paragraph (1), item a) of this Regulation, or not to depart from the results of the studies referred to in Article 2., paragraph (1), item b) of this Regulation.

Article 11.

Hardcore restrictions

- (1) The block exemption provided for in Article 2., paragraph (1), item c) of this Regulation shall not apply where the standard policy conditions in insurance contain clauses which:
 - a) contain any indication of the level of the gross premiums;
 - b) indicate the amount of the cover or the part which the policyholder must pay himself;
 - c) impose comprehensive cover including risks to which a significant number of policyholders are not simultaneously exposed;
 - d) allow the insurer to maintain the policy in force in the event that it cancels part of the cover, or increase the cover premium without the risk or the scope of the cover being changed, that is, if the insurer alters the policy conditions without the express consent of the policyholders, exceptionally, if it relates to indexation clauses;
 - e) allow the insurer to modify the term of the policy without the consent of the policyholder;
 - f) impose on the policyholder in the non-life insurance sector a contract period of more than three years;
 - g) impose a renewal period of more than one year where the policy is automatically renewed;
 - h) require the policyholder to agree to the reinstatement of the policy which has been suspended on account of the disappearance of the insured risk, if the policyholder is once again exposed to a risk of the same nature;

- i) require the policyholder to obtain cover from the same insurer for different risks;
 - j) require the policyholder, in the event of disposal of the object of insurance, to make the acquirer obliged by means of agreement to take over the insurance policy;
 - k) exclude or limit the cover of a risk if the policyholder uses security devices or services of undertakings installing or maintaining those security devices, which are not approved in accordance with the relevant specifications agreed by an association or associations of insurers in the relevant market.
- (2) The block exemption provided for in Article 2., paragraph (1), item c) of this Regulation shall not benefit the participating undertakings which agree, or agree to oblige other undertakings, not to apply insurance conditions other than standard policy conditions established pursuant to an agreement between the participating undertakings.
 - (3) the block exemption provided for in Article 2., paragraph (1), item c) of this Regulation shall not apply to agreements which exclude the coverage of certain risk categories because of the characteristic attributes of the policyholder, without prejudice to the insurer to establish specific insurance conditions for particular social or occupational categories of the population,.
 - (4) The block exemption provided for in Article 2., paragraph (1), item d) of this Regulation, shall not apply where the models include only specified interest rates or contain figures indicating administrative costs. There is the possibility left to the insurer to calculate in the models the amounts resulting of the legally imposed obligations;
 - (5) The block exemption provided for in Article 2., paragraph (1), item d) of this Regulation shall not benefit the participating undertakings which agree among themselves, or oblige other undertakings not to apply calculation models illustrating the benefits of an insurance policy other than those established pursuant to an agreement between the participating undertakings.

IV. WITHDRAWAL OF BLOCK EXAMPTION AND INDIVIDUAL EXEMPTION

Article 12.

Conditions for withdrawal of block exemptions

- (1) Pursuant to Article 7., paragraph (4) of the Act, the Council of Competition may *ex-officio* initiate the proceedings to assess the compatibility of a particular insurance agreement or group of insurance agreements from Article 2. of this Regulation with stipulations of Article 4., paragraph (3) of the Act and this Regulation, if the effects of such agreements individually or due to their cumulative effect with other similar agreements in the relevant market, do not fulfill the conditions for block exemption.
- (2) Within the meaning of paragraph (1) of this Article, the Council of Competition may initiate the assessment of insurance agreements in particular where:
 - a) studies to which the exemption stipulated in Article 2., paragraph (1), item b) of this Regulation applies are based on unjustifiable hypotheses;
 - b) standard policy conditions to which the exemption stipulated in Article 2., paragraph (1), item c) of this Regulation applies contain clauses which create, to the detriment of the policyholder, a significant imbalance between the rights and obligations arising from the contract;
 - c) the setting-up or operation of a co-insurance group and/or co-reinsurance group to which the block exemption stipulated in Article 2., paragraph (1), item e) of this Regulation applies results in the sharing of the relevant market through the conditions governing admission, the definition of the risks to be covered, the agreements on sharing the risk out or on assignment of the risk to another co-reinsurer, and by any other means.
- (3) If the results of the assessment of an agreement on the compliance with the provisions of the Act and this Regulation prove that there are no grounds for the applicability of block exemption, the Council of Competition shall by means of a decision withdraw the benefit granted by block exemption to the agreement concerned.

Article 13.
Individual exemption

Pursuant to Article 5. of the Act the participating undertakings may submit to the Council of Competition a request for individual exemption, if the agreement concerned does not fall under the applicability of block exemption within the meaning of Article 3. of this Regulation.

Article 14.
Non-compulsory notification

The participating undertakings which satisfy the conditions for block exemptions laid down in this Regulation, within the meaning of the Article 7. paragraph (3) of the Act, do not need to submit such agreements to the Council of Competition for assessment in respect of individual exemption.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 15.

- (1) Insurance agreements under Article 2. of this Regulation which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation by December 31, 2006.
- (2) As regards insurance agreements which have been concluded before this Regulation enters into force, under the condition that they have been brought in compliance with the provisions of this Regulation within the period set out under paragraph (1) of this Article, the market share, by way of an exception of Article 9., paragraph (2) of this Regulation, shall be calculated on the basis of the data relating to the calendar year preceding the year when this Regulation enters into force.

Article 16.
Entry into force

This Regulation shall enter into force on the eight day of its publication in the Official Gazettes of Entities and Brcko District of Bosnia and Herzegovina.

C.C. Number: 01-01-26-629/05

Sarajevo, December 30, 2005.

President
Council of Competition
Sena Hatibović