

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 10 paragraph (2) item (5) of the Competition Act (Official Gazette, No 79/2009), the Government of the Republic of Croatia in its session held on 16 June 2011, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO INSURANCE AGREEMENTS

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

This Regulation stipulates conditions which agreements in the insurance sector must contain and the restrictions or conditions which such agreements may not contain, in order to meet the conditions for block exemption from application of the provisions on prohibited agreements set out under Article 8 paragraph (1) of the Competition Act (hereinafter: "the Act").

Definitions

Article 2

For the purposes of the present Regulation:

- a) "agreement" means contracts, particular provisions thereof, implicit oral or explicitly written down arrangements between undertakings, concerted practices resulting from such arrangements, decisions by undertakings or associations of undertakings, general terms of business and other acts of undertakings which are or may constitute a part of these agreements and similar, notwithstanding the fact if they are concluded between undertakings operating at the same level of the production or distribution chain (horizontal agreements) or between undertakings who do not operate at the same level of the production or distribution chain (vertical agreements);
- b) "products" means insurance services;
- c) "undertaking" means person within the meaning of Article 3 of the Act;
- d) "controlled undertaking" or "connected undertakings" means undertakings considered a single economic entity within the meaning of Article 4 of the Act;
- e) "relevant market" is defined as a market of certain services which are the subject of the business operations performed by the undertaking in a specific geographic territory within the meaning of Article 7 paragraph (1) of the Act and the provisions under the Regulation on the definition of relevant market;
- f) "Agency" is the Croatian Competition Agency.

Applicability of the block exemption

Article 3

(1) Block exemption under Article 10 of the Act shall apply to insurance agreements entered into between two or more independent undertakings in the insurance sector with respect to:

(a) the joint compilation and distribution of information necessary for the purposes of calculation of the average cost of covering a specified risk in the past (hereinafter: compilations) and construction of mortality tables, and tables showing the frequency of illness, accident and invalidity in connection with insurance involving an element of capitalisation (hereinafter: tables),

(b) the joint carrying-out of studies on the probable impact of general circumstances external to the interested undertakings, either on the frequency or scale of future claims for a given risk or risk category or on the profitability of different types of investment (hereinafter: studies), and the distribution of the results of such studies.

(2) Participating undertakings in insurance agreements as referred to under paragraph (1) hereof means undertakings party to the agreement and their respective connected undertakings.

Agreements not covered by the exemption

Article 4

According to the provisions of this Regulation block exemption under Article 8 paragraph (1) of the Act shall not apply to:

- a) insurance agreements which have not been brought into compliance with this Regulation;
- b) insurance agreements the subject matter of which falls within the scope of any other block exemption regulation pursuant to Article 10 paragraph (2) of the Act.

II CONDITIONS THAT AGREEMENTS MUST CONTAIN AND OTHER CONDITIONS FOR APPLICABILITY OF BLOCK EXEMPTION

Joint compilations, tables and studies

Article 5

(1) Block exemption that may be granted to insurance agreements under Article 3 paragraph (1) item a) hereof shall apply on condition that the compilations and/or tables:

(a) are based on the assembly of data, spread over a number of risk-years chosen as an observation period, which relate to identical or comparable risks in sufficient number to constitute a base which can be handled statistically and which will yield figures on the number of claims during the said period, the number of individual risks insured in each risk-year of the chosen observation period, the total amounts paid or payable in respect of claims that have arisen during the said period and the total amount of capital insured for each risk-year during the chosen observation period;

(b) include as detailed a breakdown of the available statistics as is actuarially adequate;

(c) do not include in any way elements for contingencies, income deriving from reserves, administrative or commercial costs or fiscal or para-fiscal contributions, and take into account neither revenues from investments nor anticipated profits.

(2) The block exemption provided for in Article 3 hereof shall apply on condition that the compilations, tables or study results:

(a) do not identify the insurance undertakings concerned or any insured party;

(b) when compiled and distributed, include a statement that they are non-binding;

(c) do not contain any indication of the level of commercial premiums;

(d) are made available on reasonable, affordable and non-discriminatory terms, to any insurance undertaking which requests a copy of them, including insurance undertakings which are not active on the geographic or product market to which those compilations, tables or study results refer;

(e) except where non-disclosure is objectively justified on grounds of public security, are made available on reasonable, affordable and non-discriminatory terms, to consumer organisations or customer organisations which request access to them in specific and precise terms for a duly justified reason.

(3) Commercial premium referred to under paragraph (2) hereof means the price which is charged to the purchaser of an insurance policy.

*Common coverage of certain types of risks, market share thresholds
and duration of exemption*

Article 6

(1) The block exemption under Article 10 paragraph (2) item (5) of the Act and pursuant to this Regulation shall apply also to insurance agreements entered into between two or more undertakings in the insurance sector with respect to the setting-up and operation of

pools of insurance undertakings or of insurance undertakings and reinsurance undertakings for the common coverage of a specific category of risks in the form of co-insurance or co-reinsurance.

(2) Co-insurance pools within the meaning of paragraph (1) hereof means groups set up by insurance undertakings, with the exception of ad-hoc co-insurance agreements on the subscription market, whereby a certain part of a given risk is covered by a lead insurer and the remaining part of the risk is covered by follow insurers who are invited to cover that remainder, which agree to underwrite, in the name and for the account of all the participants of the pool, the insurance of a specified risk category, or entrust the underwriting and management of the insurance of a specified risk category, in their name and on their behalf, to one of the insurance undertakings, to a common broker or to a common body set up for this purpose.

(3) Co-reinsurance pools within the meaning of paragraph (1) hereof means groups set up by insurance undertakings, possibly with the assistance of one or more reinsurance undertakings, with the exception of ad-hoc co-reinsurance agreements on the subscription market, whereby a certain part of a given risk is covered by a lead insurer and the remaining part of this risk is covered by follow insurers who are then invited to cover that remainder in order to reinsure mutually all or part of their liabilities in respect of a specified risk category, or in order to incidentally accept, in the name and on behalf of all the participants, the reinsurance of the same category of risks.

(4) As concerns co-insurance or co-reinsurance pools which are created in order exclusively to cover new risks, the block exemption provided for paragraph (1) hereof shall apply for a period of three years from the date of the first establishment of the pool, regardless of the market share of the pool.

(5) As concerns co-insurance or co-reinsurance pools which do not fall within the scope of paragraph (4) hereof, the block exemption shall apply as long as this Regulation remains in force, on condition that the combined market share held by the participating undertakings does not exceed:

- (a) in the case of co-insurance pools, 20 % of any relevant market,
- (b) in the case of co-reinsurance pools, 25 % of any relevant market.

(6) In calculating the market share of a participating undertaking on the relevant market, account shall be taken of:

- (a) the market share of the participating undertaking within the pool in question;
- (b) the market share of the participating undertaking within another pool on the same relevant market as the pool in question, to which the participating undertaking is a party, and

(c) the market share of the participating undertaking on the same relevant market as the pool in question, outside any pool.

(7) Where the total market share of the co-insurance pool referred to in paragraph (5) item (a) hereof is initially not more than 20 % but subsequently rises above that level without exceeding 25 %, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 20 % threshold of the co-insurance pool was first exceeded.

(8) Where the total market share of the co-insurance pool referred to in paragraph (5) item (a) hereof is initially not more than 20 % but subsequently rises above 25 %, the block exemption shall continue to apply for a period of one calendar year following the year in which the level of 25 % was first exceeded.

(9) The benefit of paragraphs (7) and (8) hereof may not be combined so as to exceed a period of two calendar years.

(10) Where the total market share of the co-reinsurance pool referred to in paragraph (5) item (b) hereof is initially not more than 25 % but subsequently rises above that level without exceeding 30 %, the block exemption shall continue to apply for a period of two consecutive calendar years following the year in which the 25 % threshold of the co-reinsurance pool was first exceeded.

(11) Where the total market share of the co-reinsurance pool referred to in paragraph (5) item (b) hereof is initially not more than 25 % but subsequently rises above 30 %, the block exemption shall continue to apply for a period of one calendar year following the year in which the level of 30 % was first exceeded.

(12) The benefit of paragraphs (10) and (11) hereof may not be combined so as to exceed a period of two calendar years.

(13) New risks under paragraph (4) hereof means risks which did not previously exist, and for which insurance cover requires the development of an entirely new insurance product, not involving, for the purpose of this Regulation, an extension, improvement or replacement of an existing insurance product; or in exceptional cases, risks the nature of which has, on the basis of an objective analysis, changed so materially that it is not possible to know in advance what subscription capacity is necessary in order to cover such a risk.

Calculation of market share

Article 7

(1) The market share of the co-insurance pools or co-reinsurance pools referred to in Article 6 paragraph (5) hereof shall be calculated on the basis of the gross premium income. If 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 participating undertakings concerned.

(2) The market share under paragraph (1) hereof shall be calculated on the basis of data relating to the calendar year preceding the conclusion of the agreement.

Other conditions for exemption

Article 8

(1) The block exemption for the co-insurance pools and co-reinsurance pools provided for in Article 6 paragraph hereof shall apply on condition that:

(a) each participating undertaking having given a reasonable period of notice has the right to withdraw from the pool, without incurring any sanctions;

(b) the rules of the pool do not oblige any participating undertaking of the pool to insure or reinsure through the pool, in whole or in part, any risk of the type covered by the pool;

(c) the rules of the pool do not restrict any participating undertaking of the pool from insuring or reinsuring outside the pool, in whole or in part, any risk of the type covered by the pool;

(d) the rules of the pool do not restrict the activity of the pool or its participating undertakings to the insurance or reinsurance of risks located in any particular geographical part;

(e) the agreement does not limit sales;

(f) the agreement does not allocate markets or customers; and

(g) the participating undertakings of a co-reinsurance pool do not agree on the commercial premiums which they charge for direct insurance.

III RESTRICTIONS AND CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Article 9

The block exemption granted to insurance agreements provided for in Article 3 hereof shall not apply where participating undertakings enter into an undertaking or commitment among themselves, or oblige other undertakings, not to use compilations or tables that differ from those referred to in Article 3 paragraph (1) item (a) hereof, or not to depart from the results of the studies referred to in Article 3 paragraph (1) item (b) hereof.

IV WITHDRAWAL OF BLOCK EXEMPTION

Conditions for withdrawal

Article 10

(1) Pursuant to Article 10 paragraph (4) of the Act the Agency may, *ex officio*, initiate the proceedings to assess the compatibility of a particular insurance agreement, notwithstanding the fact that the agreement concerned satisfies the conditions for block exemption provided under this Regulation, if such an agreement individually or due to the cumulative effect with other similar agreements in the relevant market, as long as they are in effect, do not cumulatively fulfil the conditions for block exemption under Article 8 paragraph (3) of the Act.

(2) If the Agency finds, in compliance with the results of the assessment of the particular agreement referred to in paragraph (1) hereof, that the agreement concerned produces effects which do not comply with the conditions set under Article 8 paragraph (5) of the Act and this Regulation, it shall by means of a decision withdraw the benefit granted by block exemption to the agreement concerned.

Burden of proof

Article 11

(1) Without prejudice from Article 10 hereof, the insurance agreements which satisfy the conditions for block exemption under this Regulation are, as a rule, assumed to be in compliance with the conditions laid down in Article 8 paragraph (3) of the Act.

(2) By way of derogation, in the case of insurance agreements which do not satisfy the conditions for block exemption provided under this Regulation, the participants to such agreements claiming the benefit of block exemption bear the burden of proving that the agreements they conclude nevertheless satisfy the conditions for block exemption from the general ban of restrictive agreements under Article 8 paragraph (3) of the Act.

(3) In the case where the Agency has initiated the formal assessment proceedings of the restrictive agreement under paragraph (2) hereof, the participating undertakings claiming the benefit of block exemption as laid down under Article 8 paragraph (3) of the Act must substantiate the efficiency claims of the insurance agreement concerned.

V TRANSITIONAL AND FINAL PROVISIONS

Article 12

(1) For the insurance agreements which have been concluded before this Regulation enters into force, and which satisfy the conditions for block exemption under the Regulation on block exemption granted to insurance agreements (Official Gazette, No 54/2005), the later continues to apply as long as these agreements remain in force but until 30 June 2012 at the latest.

(2) As of 1 July 2012 all agreements referred to under paragraph (1) hereof must be brought in compliance with the provisions of this Regulation.

Article 13

This Regulation, as of the day of entry into force, replaces the Regulation on block exemption granted to insurance agreements published in the Official Gazette, No 54/2005.

Entry into force

Article 14

This Regulation shall enter into force on the eighth day following the day of its publication in the Official Gazette.

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Zagreb, 16 June 2011

Prime Minister
Jadranka Kosor