

THE GOVERNMENT OF THE REPUBLIC OF CROATIA

Pursuant to Article 10 and Article 11 paragraph (1) item 5 and paragraph (2) of the Competition Act (Official Gazette, No 122/2003), the Government of the Republic of Croatia in its session held on 21 April 2005, adopted the following

REGULATION ON BLOCK EXEMPTION GRANTED TO INSURANCE AGREEMENTS

I GENERAL PROVISIONS

Subject matter of the Regulation

Article 1

This Regulation shall stipulate the conditions for block exemption granted to certain categories of insurance agreements, set out the 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 exemption from application of the provisions on prohibited agreements set out in the Competition Act (hereinafter: "the Act").

Definitions

Article 2

For the purposes of the present Regulation:

- a) "the Agency" means the Competition Agency;
- b) "the Act" means the Competition Act;
- c) "agreement" means the contract, single provisions of the contract, explicit or tacit agreements, concerted practices, decisions by associations of undertakings;
- d) "products" means goods and/or services including both intermediary goods and/or services and final goods and/or services;
- e) "controlled undertaking" or "connected undertakings" means undertakings within the meaning of Article 5 of the Act;
- f) "relevant market" is defined as a market of certain goods and/or services which are the subject of the business operations performed by the undertaking in the specific geographic territory, within the meaning of Article 7 of the Act and the Regulation on the definition of relevant market (Official Gazette, No 51/2004).

Applicability of the block exemption

Article 3

(1) Block exemption shall apply to insurance agreements laid down in Article 11 paragraph (1) item 5 of the Act, entered into between two or more undertakings in the insurance sector with respect to:

(a) the joint establishment and distribution of calculations of the average cost of covering a specified risk in the past (hereinafter: "calculations"), the joint establishment and distribution of, in connection with insurance involving an element of capitalisation, mortality tables, and tables showing the frequency of illness, accident and invalidity (hereinafter: "tables");

(b) the joint carrying-out of studies on the probable impact of general circumstances external to the participating 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;

(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 models illustrating the profits to be realised from an insurance policy involving an element of capitalisation (hereinafter: "models");

(e) the setting-up and operation of groups of insurance undertakings (hereinafter: "co-insurance groups") or of insurance undertakings and reinsurance undertakings (hereinafter: "co-reinsurance groups") for the common coverage of a specific category of risks in the form of co-insurance or co-reinsurance;

(f) the establishment, recognition and distribution of technical specifications, rules or codes of practice concerning those types of security devices for which there do not exist in the relevant market technical specifications, classification systems, rules, procedures or codes of practice and procedures for assessing and approving the compliance of security devices with such specifications, rules or codes of practice (hereinafter: "assessment of compliance of security devices");

(g) the establishment, recognition and distribution of technical specifications, rules or codes of practice for the installation and maintenance of security devices, and procedures for assessing and approving the compliance of undertakings which install or maintain security devices with such specifications, rules or codes of practice (hereinafter: "assessment and approval of undertakings").

(2) Standard policy conditions under paragraph (1) item c) hereof 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) hereof means groups set up by insurance undertakings 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 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.

(4) Co-reinsurance groups under paragraph (1) item e) hereof means groups set up by insurance undertakings, possibly with the assistance of one or more re-insurance undertakings in order to reinsure mutually all or part of their liabilities in respect of a specified risk category; and incidentally, to accept 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) hereof means components and equipment designed for loss prevention and reduction, and systems formed from such elements.

(6) Participating undertakings means undertakings parties to the insurance agreement under paragraph (1) hereof and their respective connected undertakings.

Inapplicability of block exemption

Article 4

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

- a) insurance agreements which do not fulfil cumulative conditions laid down by Article 10 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 any regulation pursuant to the provisions under Article 11 of the Act.

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

Joint calculations, tables and studies

Article 5

(1) The block exemption provided for in Article 3 paragraph (1) item a) hereof shall apply on condition that the calculations 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 arisen during the said period, 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 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 paragraph (1) items a) and b) hereof shall apply on condition that the calculations, 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) are made available on reasonable and non-discriminatory terms, to any insurance undertaking which requests a copy of them, including insurance undertakings which are not active on the relevant market to which those calculations, tables or study results refer.

Standard policy conditions and models

Article 6

(1) The block exemption provided for in Article 3 paragraph (1) item c) hereof 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 mention that participating undertakings are free to offer different policy conditions to their customers; and

(c) are accessible to any interested person and provided upon request.

(2) The block exemption provided for in Article 3 paragraph (1) item d) hereof shall apply on condition that the non-binding models are established and distributed only by way of guidance.

Other conditions for exemption

Article 7

(1) The block exemption provided for in Article 3 paragraph (1) item e) hereof shall apply on condition that:

(a) each participating undertaking has the right to withdraw from the co-insurance and/or co-reinsurance group, subject to a period of notice of not more than one year, without incurring any sanctions;

(b) the rules of the co-insurance and/or co-reinsurance group do not oblige any member of the group to insure or re-insure through the group, in whole or in part, 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 output or sales;
- (e) the agreement does not allocate markets or customers;
- (f) the members of a co-reinsurance group do not agree on the commercial 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 commercial policy of the group, is also a member of, and/or exercises a determining influence on the commercial policy of, a different co-insurance and/or co-reinsurance group active on the same relevant market.

(2) Commercial premium under paragraph (1) item f) hereof and Article 12 paragraph (1) item a) of this Regulation means the price which is charged to the purchaser of an insurance policy.

Security devices

Article 8

The block exemption provided for in Article 3 paragraph (1) items f) and g) hereof shall apply on condition that:

- (a) the technical specifications and compliance assessment procedures are precise, technically justified and in proportion to the performance to be attained by the security device concerned;
- (b) the rules for the evaluation of installation undertakings and/or maintenance undertakings are objective, relate to their technical competence and are applied in a non-discriminatory manner;
- (c) such specifications and rules are established and distributed with an accompanying statement that insurance undertakings are free to accept for insurance, 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 accompanying statement that insurance undertakings are free to accept for insurance, on whatever terms and conditions they wish, other installation and maintenance undertakings which do not comply with these technical specifications or rules;
- (e) such specifications and rules are provided upon request to any interested person;
- (f) any lists of security devices and installation and maintenance undertakings compliant with specifications include a classification based on the level of performance obtained;
- (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) hereof does not impose on the applicant any expenses that are disproportionate to the costs of the approval procedure;

(i) the security devices and installation undertakings and maintenance undertakings that meet the assessment criteria are certified to this effect 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) hereof is certified in writing;

(k) the grounds for a refusal to issue the certificate of compliance and approval under item i) hereof are given in writing by attaching a duplicate copy 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) hereof are provided in writing; and

(m) the specifications and rules are applied by bodies accredited to norms.

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

Article 9

(1) As concerns new co-insurance and co-reinsurance groups which are created after the date of entry into force of the present Regulation in order exclusively to cover new risks, the block exemption provided for in Article 3 paragraph (1) item e) hereof shall apply for a period of three years from the date of the first establishment of the group, regardless of the market share of the group.

(2) As concerns co-insurance and co-reinsurance groups which do not fall within the scope of the first paragraph, the block exemption provided for in Article 3 paragraph (1) item e) hereof shall apply 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 groups, more than 20 % of the relevant market;

(b) in the case of co-reinsurance groups, more than 25 % of the relevant market.

(3) If the market share of the co-insurance group referred to in the second paragraph item a) hereof 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 the 20 % threshold of the co-insurance group was first exceeded.

(4) If the market share of the co-insurance group referred to in the second paragraph item a) hereof is initially not more than 20 % but subsequently rises above 22 %, the block exemption shall continue to apply for one calendar year following the year in which the level of 22 % of the co-insurance group was first exceeded.

(5) The benefit of paragraphs (3) and (4) hereof 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 item b) of the second paragraph hereof 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 % threshold of the co-reinsurance group was first exceeded.

(7) If the market share of the co-reinsurance group referred to in item b) of the second paragraph hereof is initially not more than 25 % but subsequently rises above 27 %, the block exemption shall continue to apply for one calendar year following the year in which the level of 27 % of the co-reinsurance group was first exceeded.

(8) The benefit of paragraphs (6) and (7) hereof may not be combined so as to exceed a period of block exemption of two calendar years.

(9) "New risks" under paragraph (1) hereof means risks which did not exist before, and for which insurance cover requires a new underwritten insurance policy. An extension, improvement or replacement of an existing insurance policy may not be considered new risks.

Calculation of market share

Article 10

(1) The market share of the participating undertakings provided for in Article 9 paragraph (2) 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 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.

(3) The market share under paragraph (1) hereof shall be increased by the market share held by the connected undertakings to the participating undertakings realized as provided for in paragraph (1) and (2) hereof.

III RESTRICTIONS AND CONDITIONS WHICH AGREEMENTS MAY NOT CONTAIN

Agreements not covered by the exemption

Article 11

The block exemption 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 calculations or tables that differ from those established pursuant to 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.

Hardcore restrictions

Article 12

(1) The block exemption provided for in Article 3 paragraph (1) item c) hereof shall not apply where the standard policy conditions contain clauses which:

- (a) contain any indication of the level of commercial 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 the event that he cancels part of the cover, increases the premium without the risk or the scope of the cover being changed (without prejudice to indexation clauses), or otherwise alters the policy conditions without the express consent of the policyholder;
- (e) allow the insurer to modify the term of the policy without the express consent of the policyholder;
- (f) impose on the policyholder in the non-life assurance 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 a policy which has been suspended on account of the disappearance of the insured risk, if he 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 take over the insurance policy;
- (k) exclude or limit the cover of a risk if the policyholder uses security devices, or installing or maintenance undertakings, 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 3 paragraph (1) item c) hereof shall not benefit the participating undertakings which agree, or agree to oblige other undertakings, not to apply conditions other than standard policy conditions established pursuant to an agreement between the participating undertakings.

(3) Without prejudice to the establishment of specific insurance conditions for particular social or occupational categories of the population, the block exemption provided for in Article 3 paragraph (1) item c) hereof shall not apply to agreements which exclude the coverage of certain risk categories because of the characteristics associated with the policyholder.

(4) The block exemption provided for in Article 3 paragraph (1) item d) hereof shall not apply where, without prejudice to legally imposed obligations concerning the amounts calculated by the insurer, the models include only specified interest rates or contain figures indicating administrative costs.

(5) The block exemption provided for in Article 3 paragraph (1) item d) hereof shall not benefit the participating undertakings which concert or undertake among themselves, or oblige other undertakings, not to apply models illustrating the benefits of an insurance policy other than those established pursuant to an agreement between the participating undertakings.

IV WITHDRAWAL OF BLOCK EXEMPTION AND INDIVIDUAL EXEMPTION

Conditions for withdrawal

Article 13

(1) Pursuant to Article 11 paragraph (4) of the Act the Agency may, *ex officio*, initiate the proceedings to assess the compatibility of a particular insurance agreement or group of insurance agreements as laid down in Article 3 hereof, with the provisions of Article 10 of the Act and this Regulation, if such agreements individually or due to their cumulative effect with other similar agreements in the relevant market, do not fulfil the conditions for block exemption.

(2) Within the meaning of paragraph (1) hereof the Agency may initiate the assessment of insurance agreements in particular where:

(a) studies to which the exemption in Article 3 paragraph (1) item b) hereof applies are based on unjustifiable hypotheses;

(b) standard policy conditions to which the exemption in Article 3 paragraph (1) item c) hereof 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 in Article 3 paragraph (1) item e) hereof applies results, through the conditions governing admission, the definition of the risks to be covered, the agreements on retrocession or by any other means, in the sharing of the relevant market.

(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 Agency shall by means of a decision withdraw the benefit granted by block exemption to the agreement concerned.

Individual exemption

Article 14

Pursuant to Article 12 of the Act the participating undertakings may submit to the Agency a request for individual exemption, if the agreement concerned does not fall under the applicability of block exemption within the meaning of Article 4 hereof.

Non-compulsory notification

Article 15

There is no compulsory notification for the participating undertakings which satisfy the conditions for block exemption laid down in this Regulation, within the meaning of Article 11 paragraph (3) of the Act, i.e. such agreements need not to be submitted to the Agency for assessment in respect of individual exemption.

V TRANSITIONAL AND FINAL PROVISIONS

Article 16

(1) Insurance agreements under Article 3 hereof, which have been concluded before this Regulation enters into force, must be brought in compliance with the provisions of this Regulation by 30 June 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) hereof, the market share, without prejudice to Article 10 paragraph (2) hereof, shall be calculated on the basis of the data relating to the calendar year preceding the year of the entry into force of this Regulation.

Entry into force

Article 17

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, 21 April 2005

Prime Minister
Ivo Sanader