



REPUBLIC OF CYPRUS

**THE COMPETITION (PROTECTION) LAW
(LAWS OF 1989 TO 2001)**

(Order made by virtue of section 5(2))

**The Block Exemptions to Certain Categories (Agreements,
Decisions and Concerted Practices in the Insurance Sector) Order, 2003**

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THE COMPETITION (PROTECTION) LAW
(LAWS OF 1989 TO 2001)

Order made by virtue of section 5(2)

For the purposes of adoption of provisions corresponding to the Community Preamble.
act—

"Commission Regulation (EC) No. 358/2003 of 27 February 2003, on the application of Article 81(3) of the Treaty to certain categories of agreements, decisions and concerted practices in the insurance sector" (OJ L 53 of 27.2.2003, p. 8),

The Council of Ministers, exercising the powers vested in it, by subsection (2) of section 5 of the Competition (Protection) Laws, 1989 to (No.2), 2000, makes the following Order.

207 of 1989
111(I) of 1999
87(I) of 2000
155(I) of 2000.

1. This Order may be cited as the Block Exemptions to Certain Categories (Agreements, Decisions and Concerted Practices in the Insurance Sector) Order, 2003. Short title.

INTRODUCTORY PROVISIONS

2.—(1) In this Order—

Interpretation.

"agreement" means an agreement, a decision of an association of undertakings or a concerted practice;

"Agreement on the European Economic Area" means the Agreement on the European Economic Area signed at Oporto on 2 May 1992 (OJ L1 of 3.1.1994, p.3), as amended for the time being;

"commercial premium" means the price which is charged to the purchaser of an insurance policy;

"connected undertakings" means—

- (a) undertakings in which a party to the agreement, directly or indirectly has—
 - (i) the power to exercise more than half the voting rights, or
 - (ii) the power to appoint more than half the members of the supervisory board, board of management or bodies legally representing the undertaking, or
 - (iii) the right to manage the undertaking's affairs;
- (b) undertakings which directly or indirectly have, over a party to the agreement, the rights or powers mentioned in point (a);
- (c) undertakings in which an undertaking referred to in point (b) has, directly or indirectly, the rights or powers mentioned in point (a);
- (d) undertakings in which a party to the agreement together with one or more of the undertakings referred to in points (a), (b) or (c), or in which two or more of the latter undertakings, jointly have the rights or powers mentioned in point (a);
- (e) undertakings in which the rights or the powers mentioned in point (a) are jointly held by—
 - (i) parties to the agreement or one or more connected undertakings referred to in points (a), (b), (c) and (d), or

- (ii) one or more parties to the agreement or one or more of their connected undertakings referred to in points (a), (b), (c) and (d) and one or more third parties;

"co-insurance groups" means groups set up by insurance undertakings which—

- (a) agree to underwrite in the name and for the account of all the participants the insurance of a specified risk category, or
- (b) 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;

"co-reinsurance groups" means groups set up by insurance undertakings, possibly with the assistance of one or more re-insurance undertakings—

- (a) in order to reinsure mutually all or part of their liabilities in respect of a specified risk category,
- (b) incidentally, to accept in the name and on behalf of all the participants, the re-insurance of the same category of risks;

"exemption" means the exemption from the application of the provisions of subsection (1) of section 4 of the Law, provided for in paragraph 3 of this Order;

"insurance business" means the insurance business as prescribed by the Insurance Business and other Related Matters Law, 2002 or any law amending or substituted for the same;

35(I) of 2002.

"insurance policy" means a policy regulated by the Contract Law or by any law amending or substituted for the same, entered into between the insurance undertaking and one or more insured parties, irrespective of whether an insurance policy is issued or not, in respect of the granting of insurance coverage in one or more classes, from those set out in the two Schedules, First and Second, of the Insurance Business and other Related Matters Law, 2002 or any law amending or substituted for the same;

Cap. 149,
22(I) of 1995.

"insurance undertaking" means the Cyprus insurance company or any other undertaking carrying on insurance business, irrespective of its legal form, pursuant to the provisions of the law in force in the State where it has its head office and includes the Union of Insurers Lloyds of London;

"Law" means the Competition (Protection) Laws, 1989 to (No.2), 2000 or any law amending or substituted for the same;

"member state" is considered the member state of the European Union or the contracting party to the Agreement on the European Economic Area and the Swiss Confederation, where the undertaking has its head office, covering insurance risks or insurance obligations as provided for in the Insurance Business and Other Related Matters Law, 2002 or any law amending or substituted for the same;

"new risks" means risks which did not exist before and for which insurance cover requires the development of an entirely new insurance product, not involving an extension, improvement or replacement of an existing insurance product;

"participating undertakings" means undertakings party to the agreement and their respective connected undertakings;

"security devices" means components and equipment designed for loss prevention and reduction, and systems formed from such elements;

"standard policy conditions" means any clauses contained in model or reference insurance policies prepared jointly by insurers or by bodies or associations of insurers.

3.—(1) Pursuant to the provisions of subsection (3) of section 4 and subsection (1) of section 5 of the Law and subject to the provisions of this Order, it is hereby declared that subsection (1) of section 4 of the Law shall not apply to agreements entered into between two or more undertakings in the insurance sector (hereinafter referred to as "the parties") with respect to—

Exemptions from the provisions of subsection (1) of section 4 of the Law.

- (a) the joint establishment and distribution of:
 - (i) calculations of the average cost of covering a specified risk in the past (hereinafter "calculations");
 - (ii) mortality tables and tables showing the frequency of illness, accident and invalidity, in connection with insurance involving an element of capitalization (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;
- (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 models illustrating the profits 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 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; and
- (f) the establishment, recognition and distribution of—
 - (i) technical specifications, rules or codes of practice concerning those types of security devices for which there do not exist at Cyprus level technical specifications, classification systems, rules, procedures or codes of practice harmonized in line with Community legislation covering the free movement of goods, and procedures for assessing and approving the compliance of security devices with such specifications, rules or codes of practice;
 - (ii) 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.

JOINT CALCULATIONS, TABLES AND STUDIES

4.—(1) The exemptions provided for in paragraph 3(a) shall apply on condition that the calculations or tables:

Conditions for the application of exemptions of paragraph 3.

- (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 (inter alia)—
 - (i) the number of claims during the said observation period,

- (ii) the number of individual risks insured in each risk–year of the chosen observation period,
 - (iii) the total amounts paid or payable in respect of claims arisen during the said period,
 - (iv) the total amount of capital insured for each 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 exemptions provided for in both paragraph 3(a) and paragraph 3(b) 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 geographical or product market to which those calculations, tables or study results refer.
5. The exemption shall not apply where participating undertakings enter into an undertaking or commitment among themselves, not to use calculations or tables that differ from those established pursuant to paragraph 3(a) or not to depart from the results of the studies referred to in paragraph 3(b).

Agreements not covered by the exemption.

STANDARD POLICY CONDITIONS AND MODELS

- 6.—(1) The exemption provided for in paragraph 3(c) shall apply on condition that the standard policy conditions—
- (a) Are established and distributed with an explicit statement that they are not 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 simply upon request.
- (2) The exemption provided for in paragraph 3(d) shall apply on condition that the non–binding models are established and distributed only by way of guidance.

Additional conditions for the application of the exemption.

- 7.—(1) The exemption provided for in paragraph 3(c) 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 (the "excess");
 - (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

Agreements not covered by the exemption.

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 unless notice is given upon the expiry of a given period;
- (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 one or several other Member States or at the European level.

(2) The exemption provided for in paragraph 3(c) shall not benefit undertakings or associations of 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 exemption provided for in paragraph 3(c) shall not apply to agreements, decisions and concerted practices which exclude the coverage of certain risk categories because of the characteristics associated with the policyholder.

(4) The exemption provided for in paragraph 3(d) shall not apply where, without prejudice to legally imposed obligations, the non-binding models include only specified interest rates or contain figures indicating administrative costs.

(5) The exemption provided for in paragraph 3(d) shall not benefit undertakings or associations of 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.

COMMON COVERAGE OF CERTAIN TYPES OF RISKS

8.—(1) As concerns co-insurance or co-reinsurance groups which are created after the date of entry into force of this Order in order exclusively to cover new risks, the exemption provided for in paragraph 3(e) 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.

Application of exemption and market share threshold.

(2) As concerns co-insurance or co-reinsurance groups which do not fall within the scope of sub-paragraph (1) (for the reason that they have been in existence for over three years or have not been created in order to cover a new risk), the exemption provided for in paragraph 3(e) shall apply as long as this

Order remains in force, on condition that the insurance products 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) For the purposes of applying the market share threshold provided for in sub-paragraph (2), the following rules shall apply—

- (a) The market share shall be calculated on the basis of the gross premium income:

Provided that 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 undertaking concerned,

- (b) the market share shall be calculated on the basis of data relating to the preceding calendar year,
- (c) the market share held by the undertakings referred to in paragraph 2(e) shall be apportioned equally to each undertaking having the rights or the powers listed in paragraph 2(a).

(4) If the market share referred to in point (a) of sub-paragraph (2) is initially not more than 20%, but subsequently rises above this level without exceeding 22%, the exemption provided for in paragraph 3(e) shall continue to apply for a period of two consecutive calendar years following the year in which the 20% threshold was first exceeded.

(5) If the market share referred to in point (a) of sub-paragraph (2) is initially not more than 20%, but subsequently rises above 22%, the exemption provided for in paragraph 3(e) shall continue to apply for one calendar year following the year in which the level of 22% was first exceeded.

(6) The benefit of sub-paragraphs (4) and (5) may not combined so as to exceed a period of two calendar years.

(7) If the market share referred to in point (b) of sub-paragraph (2) is initially not more than 25%, but subsequently rises above this level without exceeding 27%, the exemption provided for in paragraph 3(e) shall continue to apply for a period of two consecutive years following the year in which the 25% threshold was first exceeded.

(8) If the market share referred to in point (b) of sub-paragraph (2) is initially not more than 25%, but subsequently rises above 27%, the exemption provided for in paragraph 3(e) shall continue to apply for one calendar year following the year in which the level of 27% was first exceeded.

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

Additional
conditions
for exemption.

9. The exemption provided for in paragraph 3(e) shall apply on condition that—

- (a) Each participating undertaking has the right to withdraw from the group, subject to a period of notice of not more than one year, without incurring any sanctions;
- (b) the rules of the group do not oblige any member of the group to insure or reinsure through the group, in whole or in part, any risk of the type covered by the group;

- (c) the rules of the group do not restrict the activity of the group or its members to the insurance or reinsurance of risks located in any particular geographical part of the Republic;
- (d) the agreement does not limit out put 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 group, or undertaking which exercises a determining influence on the commercial policy of the group, is also a member of, or exercises a determining influence on the commercial policy of, a different group active on the same relevant matter.

SECURITY DEVICES

10. The exemption provided for in paragraph 3(f) shall apply on condition that— Additional conditions for exemption.

- (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 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 or installation and maintenance undertakings which do not comply with these technical specifications or rules;
- (d) such specifications and rules are provided simply upon request to any interested person;
- (e) any lists of security devices and installation and maintenance undertakings compliant with these specifications include a classification based on the level of performance obtained;
- (f) a request for an assessment may be submitted at any time by any applicant;
- (g) the evaluation of conformity does not impose on the applicant any expenses that are disproportionate to the costs of the approval procedure;
- (h) the devices and installation and maintenance undertakings that meet the assessment criteria are certified to this effect in a non-discriminatory manner within a period of six months from the date of the submission of the application, except where technical considerations justify a reasonable additional period;
- (i) the fact of compliance or approval is certified in writing;
- (j) the grounds for a refusal to issue the certificate of compliance are given in writing by attaching a duplicate copy of the records of the tests and controls that have been carried out;
- (k) the grounds for a refusal to take into account a request for assessment are provided in writing;
- (l) the specifications and rules are applied by bodies accredited to norms in the series CYS EN 45 000 and CYS EN ISO/IEC 17025:2000.

MISCELLANEOUS PROVISIONS

Withdrawal
of the benefit
of the Order
by the
Commission.

11. The Commission may withdraw the benefit of this Order, where either on its own initiative or at a request of a natural person or a legal entity claiming a legitimate interest, it finds in a particular case that an agreement to which the exemption provided for in paragraph 3 applies, nevertheless has effects which are incompatible with the conditions laid down in subsection (1) of section 5 of the Law, and in particular where—

- (a) Studies to which the exemption in paragraph 3(b) applies are based on unjustifiable hypotheses;
- (b) standard policy conditions to which the exemption in paragraph 3(c) applies, contain clauses which create, to the detriment of the policyholder, a significant imbalance between the rights and obligations arising from the contract;
- (c) in relation to the common coverage of certain types of risks to which the exemption in paragraph 3(e) applies, the setting up or operation of a group 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 markets for the insurance products concerned or for neighbouring products.

Repeal
of an Order.
Official
Gazette,
Third
Supplement (I):
31.10.1997.

12. Upon publication of this Order in the Official Gazette of the Republic, the Block Exemptions (Agreements, Decisions and Concerted Practices in the Insurance Sector) Order, 1997, is repealed.