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**THE PROTECTION OF COMPETITION LAW
(LAW 207 OF 1989)**

Order made by virtue of section 5(2)

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**THE PROTECTION OF COMPETITION LAW
(LAW 207 OF 1989)**

Order made by virtue of section 5(2)

The Council of Ministers, in the exercise of its powers conferred upon it by virtue of subsection (2) of section 5 of the ^{207 of 1989.} Protection of Competition Law of 1989, makes this Order.

1. This Order shall be cited as the Block Exemptions ^{Short title.} (Agreements, Decisions and Concerted Practices in the Insurance Sector) Order of 1997.

2. Unless otherwise required, in this Order- ^{Interpretation.}

"co-insurance groups" means those 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, or
- (b) incidentally, to accept in the name and on behalf of all the participants the re-insurance of the same category of risks.

3. Pursuant to subsection (2) of section 5 of the Law and without prejudice to the conditions provided for in this Order, section 4(1) of the Law shall be declared inapplicable to the agreements, decisions and concerted practices in the insurance sector which seek co-operation between undertakings with respect to-

Agreements, decisions and concerted practices in the insurance sector which are exempted.

- (a) the establishment of common risk-premium tariffs based on collectively ascertained statistics or the number of claims;
- (b) the establishment of standard policy conditions;
- (c) the common coverage of certain types of risks;
- (d) the establishment of common rules on the testing and acceptance of security devices.

4. The exemption provided for in subparagraph 3(a) shall apply to agreements, decisions and concerted practices which relate to-

Calculation of the premium.

- (a) the calculation of the average cost of risk cover (pure premiums) or the establishment and distribution of mortality tables, and tables showing the frequency of illness, accident and invalidity, in connection with

insurance involving an element of capitalization - such tables being 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 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 risk-year during the chosen observation period;
- (b) the carrying-out of studies on the probable impact of general circumstances external to the interested undertakings on the frequency or scale of claims, or the profitability of different types of investment, and the distribution of their results.

5. The exemption shall apply on condition that:

Conditions for exemption of the common premiums.

- (a) the calculations, tables or study results referred to in paragraph 4, when compiled and distributed, include a statement that they are purely illustrative;

- (b) the calculations or tables referred to in subparagraph 4(a) do not include in any way loadings for contingencies, income deriving from reserves, administrative or commercial costs comprising commissions payable to intermediaries, fiscal or para-fiscal contributions or the anticipated profits of the participating undertakings;
- (c) the calculations, tables or study results referred to in paragraph 4 do not identify the insurance undertakings concerned.

6. The exemption shall not benefit undertakings or associations of undertakings which enter into an undertaking or commitment among themselves, or which oblige other undertakings, not to use calculations or tables that differ from those established pursuant to subparagraph 4(a), or not to depart from the results of the studies referred to in subparagraph 4(b).

Restriction in the exemption of the common premiums.

7.-(1) The exemption provided for in subparagraph 3(b) shall apply to agreements, decisions and concerted practices which have as their object the establishment and distribution of standard policy conditions for direct insurance.

Standard policy conditions for direct insurance.

(2) The exemption shall also apply to agreements, decisions and concerted practices which have as their object the establishment and distribution of common models illustrating the profits to be realized from an insurance policy involving an element of capitalization.

8.-(1) The exemption shall apply on condition that the

Conditions for

standard policy conditions referred to in subparagraph 7(1)-

exemption of
standard policy
conditions for
direct insurance.

- (a) are established and distributed with an explicit statement that they are purely illustrative; and
- (b) expressly mention the possibility that different conditions may be agreed; and
- (c) are accessible to any interested person and provided simply upon request.

(2) The exemption shall apply on condition that the illustrative models referred to in subparagraph 7(2) are established and distributed only by way of guidance.

9.-(1) The exemption shall not apply where the standard policy conditions referred to in subparagraph 7(1) contain clauses which-

Restrictions in
the exemption
of standard
conditions for
direct insurance.

- (a) exclude from the cover losses normally related to the class of insurance concerned, without indicating explicitly that each insurer remains free to extend the cover to such events;
- (b) make the cover of certain risks subject to specific conditions, without indicating explicitly that each insurer remains free to waive them;
- (c) impose comprehensive cover including risks to which a

significant number of policyholders is not simultaneously exposed, without indicating explicitly that each insurer remains free to propose separate cover;

- (d) indicate the amount of the cover or the part which the policyholder must pay himself (the "excess");
- (e) 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;
- (f) allow the insurer to modify the term of the policy without the express consent of the policyholder;
- (g) impose on the policyholder in the non-life assurance sector a contract period of more than three years;
- (h) 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;
- (i) 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;
- (j) require the policyholder to obtain cover from the same insurer for different risks;

- (k) require the policyholder, in the event of disposal of the object of insurance, to make the acquirer take over the insurance policy.

(2) The exemption shall not benefit undertakings or associations of undertakings which concert or undertake among themselves, or oblige other undertakings not to apply conditions other than those referred to in subparagraph 7(1).

10. Without prejudice to the establishment of specific insurance conditions for particular social or occupational categories of the population, the exemption 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.

Non-application of the exemption in certain agreements, decisions and concerted practices.

11.-(1) The exemption shall not apply where, without prejudice to legally imposed obligations, the illustrative models referred to in subparagraph 7(2) include only specified interest rates or contain figures indicating administrative costs.

Additional restrictions in the exemption of standard policy conditions.

(2) The exemption 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 referred to in subparagraph 7(2).

12.-(1) The exemption under subparagraph 3(c) hereof shall apply to agreements which have as their object the setting-up and operation of groups of insurance undertakings or of insurance undertakings and reinsurance undertakings for the

Common coverage of certain types of risks.

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

(2) The agreements referred to in subparagraph (1) may determine-

- (a) the nature and characteristics of the risks covered by the co-insurance or co-reinsurance;
- (b) the conditions governing admission to the group;
- (c) the individual own-account shares of the participants in the risks co-insured or co-reinsured;
- (d) the conditions for individual withdrawal of the participants;
- (e) the rules governing the operation and management of the group.

(3) Additionally, the agreements which have as their object the setting-up and operation of groups of co-reinsurance undertakings may further determine-

- (a) the shares in the risks covered which the participants do not pass on for co-reinsurance (individual retentions);
- (b) the cost of co-reinsurance, which includes both the operating costs of the group and the remuneration of the participants in their capacity as co-reinsurers.

13.-(1) The exemption shall apply on condition that-

Conditions for

exemption of
common
coverage of
certain types of
insurance risks.

(a) the insurance products underwritten by the participating undertakings or on their behalf do not, in any of the markets concerned, represent-

(i) in the case of co-insurance groups, more than 10% of all the insurance products that are identical or regarded as similar from the point of view of the risks covered and of the cover provided,

(ii) in the case of co-reinsurance groups, more than 15% of all the insurance products that are identical or regarded as similar from the point of view of the risks covered and of the cover provided.

(b) each participating undertaking shall have the right to withdraw from the group, subject to a period of notice of not more than six months, without incurring any sanctions.

(2) By way of derogation from subparagraph (1), the respective percentages of 10% and 15% shall apply only to the insurance products brought into the group, to the exclusion of identical or similar products underwritten by the participating companies or on their behalf and which are not brought into the group, where this group covers-

- (a) catastrophe risks where the claims are both rare and large,
 - (b) aggravated risks which involve a higher probability of claims because of the characteristics of the risk insured.
- (3) The derogation referred to in subparagraph (2) is subject to the following conditions:

- (a) that none of the concerned undertakings shall participate in another group that covers risks on the same market, and,
- (b) with respect to groups which cover aggravated risks, that the insurance products brought into the group shall not represent more than 15% of all identical or similar products underwritten by the participating companies or on their behalf on the market concerned.

14. Apart from the obligations referred to in paragraph 12, no restriction on competition shall be imposed on the undertakings participating in a co-insurance group other than-

Restrictions of competition likely to be imposed on the undertakings participating in a co-insurance group.

- (a) the obligation, in order to qualify for the co-insurance cover within the group, to-
 - (i) take preventive measures into account,

- (ii) use the general or specific insurance conditions accepted by the group,
 - (iii) use the commercial premiums set by the group;
- (b) the obligation to submit to the group or approval any settlement of a claim relating to a co-insured risk;
 - (c) the obligation to entrust to the group the negotiation of reinsurance agreements on behalf of all concerned;
 - (d) a ban on reinsuring the individual share of the co-insured risk.

15. Apart from the obligations referred to in paragraph 12, no restriction on competition shall be imposed on the undertakings participating in a co-reinsurance group other than-

Restrictions of competition likely to be imposed on the undertakings participating in a co-reinsurance group.

- (a) the obligation, in order to qualify for the co-reinsurance cover, to
 - (i) take preventive measures into account,
 - (ii) use the general or specific insurance conditions accepted by the group,
 - (iii) use a common risk-premium tariff for direct insurance calculated by the group, regard being

had to the probable cost of risk cover or, where there is not sufficient experience to establish such a tariff, a risk premium accepted by the group,

- (iv) participate in the cost of the co-reinsurance;
- (b) the obligation to submit to the group for approval the settlement of claims relating to the co-reinsured risks and exceeding a specified amount, or to pass such claims on to it for settlement;
- (c) the obligation to entrust to the group the negotiation of retrocession agreements on behalf of all concerned;
- (d) a ban on reinsuring the individual retention or retroceding the individual share.

16. The exemption provided for in subparagraph 3(d) shall apply to agreements, decisions and concerted practices which have as their object the establishment, recognition and distribution of-

Security devices.

- (a) technical specifications, in particular technical specifications intended as future European norms, and also procedures for assessing and certifying the compliance with such specifications of security devices and their installation and maintenance,
- (b) rules for the evaluation and approval of installation undertakings or maintenance undertakings.

17. The exemption shall apply on condition that-

Conditions for

exemption of
security
devices.

- (a) the technical specifications and compliancy 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 statement that insurance undertakings are free to accept other security devices or approve other 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) such 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 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;
- (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 observing the appropriate provisions of norms in the series EN 45000.

18.-(1) The provisions of this Order shall also apply where Participating undertakings.
the participating undertakings lay down rights and obligations for the undertakings connected with them. The market shares, legal acts or conduct of the connected undertakings shall be considered to be those of the participating undertakings.

(2) "Connected undertakings" for the purposes of this Order means-

- (a) undertakings in which a participating undertaking directly or indirectly-

- (i) owns more than half the capital or business assets, or
 - (ii) has the power to exercise more than half the voting rights, or
 - (iii) has the power to appoint more than half the members of the supervisory board, board of directors or bodies legally representing the undertaking, or
 - (iv) has the right to manage the affairs of the undertaking;
- (b) undertakings which directly or indirectly have in or over a participating undertaking the rights or powers listed in subparagraph (a);
- (c) undertakings in which an undertaking referred to in subparagraph (b) directly or indirectly has the rights or powers listed in subparagraph (a).

(3) Undertakings in which the participating undertakings or undertakings connected with them have directly or indirectly the rights or powers set out in subparagraph (2)(a) shall be considered to be connected with each of the participating undertakings.

19. The Commission may withdraw the benefit of this Order where it finds in a particular case that an agreement, decision or concerted practice exempted under this Order nevertheless has certain effects which are incompatible with the conditions

Withdrawal of the benefit of the application of this Order by the

laid down in section 5 of the Law, and in particular where-

the
Commission.

- (a) in the cases referred to in paragraphs 4, 5 and 6, the studies are based on unjustifiable hypotheses,
- (b) in the cases referred to in paragraphs 7, 8, 9, 10 and 11, the standard policy conditions contain clauses other than those listed in subparagraph 9(1) which create, to the detriment of the policyholder, a significant imbalance between the rights and obligations arising from the contract,
- (c) in the cases referred to in subparagraphs 12, 13, 14 and 15-
 - (i) the undertakings participating in a group would not, having regard to the nature, characteristics and scale of the risks concerned, encounter any significant difficulties in operating individually on the relevant market without organizing themselves in a group;
 - (ii) one or more participating undertakings exercise a determining influence on the commercial policy of more than one group on the same market;
 - (iii) the setting-up or operation of a group may, through the conditions governing admission, the definition of the risks to be covered, the agreements on retrocession or by any other means, result in the sharing of the markets for the insurance products concerned or form

neighbouring products;

- (iv) an insurance group which benefits from the provisions of subparagraph 13(2) has such a position with respect to aggravated risks that the policyholders encounter considerable difficulties in finding cover outside this group.