



Banking and Payments Authority of Kosovo

Pursuant to the authority given under Section 17.b of UNMIK Regulation No. 2001/24 date of October 1, 2001 on Amending UNMIK Regulation No. 1999/20, on Banking and Payments Authority of Kosovo and Section 3.3 of UNMIK Regulation No.2001/25 date of October 5, 2001 on Licensing, Supervision and Regulation of Insurance Companies and Insurance intermediaries,

For the purpose of execution Section 44 of UNMIK Regulation Nr. 2001/25

Governing Board of the Banking and Payment Authority of Kosovo, at the meeting held on March 28, 2002 adopt the following:

Rule 18 on Affiliation and Outsourcing Contracts

Section 1

1. Scope of Rule

This rule applies to all insurance companies and insurance intermediaries licensed, or applying to be so licensed by, the BPK.

2. Legal Authority

This rule implements Section 44, Chapter VI (Prudential Matters) of the Insurance Regulations.

3. Definitions

In this rule, the following terms mean:

“Affiliation contract” is a contract or agreement where a company submits itself to the management of another entity, or commits itself to transfer all or part of its profits to that company.

“Board of directors” means the highest-ranking governing body of a corporation composed of members appointed by the voting equity holders. In this rule, the term “board of directors” refers to:

- a) In the case of a corporation or company created and existing under the laws of Kosovo, the board of directors body, itself.
- b) In the case of a foreign company incorporated in another jurisdiction, but which is licensed to conduct insurance business in Kosovo, the senior officer of the company's office in Kosovo, who is a resident of Kosovo and accepted as such by the BPK.

“Board” refers to board of directors as defined in this rule.

“Holding entity” or “controlling entity” means a person, firm, partnership, corporation or association owning or holding, directly or indirectly, more than 50% percent of the company's voting equity shares.

“Company” refers to either, or both, insurance company or insurance intermediary company already licensed, or applying to be so licensed, by the BPK.

“Outsourcing contract” or “outsourcing” means the transfer of certain functions of material importance to the sound conduct of operations of a company to another entity whether or not the receiving entity is another insurance company or insurance intermediary.

“Senior officer” is the highest ranking officer of a company whether using the title of “president”, “vice president”, “managing director”, “country representative”, “manager” or such other title or titles.

Section 2 Affiliation Contracts

1. Approval of the BPK

No company shall enter into an affiliation contract or agreement without the approval of the BPK. At its discretion; BPK may approve an affiliation contract or agreement where it is satisfied that the following requirements are met:

- a) The board of directors of the company submits the proposed contract and such other documents requested by the BPK in order to provide the BPK with reasonably adequate information to conduct a review and assessment of the proposed affiliation contract or agreement.
- b) The proposed affiliation contract is between a company

and its holding or controlling entity.

- c) The holding or controlling entity with which the company proposes to enter into an affiliation contract submits itself to the regulatory and supervisory authorities of the BPK and shall not, in any way, intervene with the effective supervision of the company by the BPK. These are conditions that must be stipulated, clearly and unequivocally, in the terms and conditions of the contract or agreement.

In the case of a foreign holding or controlling entity, the contract or agreement must provide for the supplementary regulatory and supervisory authority of the BPK over the business affairs of such foreign holding or controlling entity and the agreement or contract must be signed and conformed to by the relevant authority in the foreign jurisdiction.

- d) All the directors and persons managing the holding or controlling entity satisfy the appropriate “fit and proper” test prescribed by the BPK.
- e) The contract or agreement must provide that any transfer of profit from the company to the holding or controlling entity is deemed as dividend payment, the declaration and payment of which is subject to prior approval of the BPK.
- f) The contract or agreement must contain all other provisions as may be prescribed by the BPK.

Section 3 Outsourcing Contracts

1. Restrictions

Section 44 of the Insurance Regulation prohibits a company to outsource its principal insurance operational activities. Except in pursuant of a duly approved affiliation contract or agreement consistent with Section 2 of this rule, a company cannot outsource the following activities or functions:

- a) Risk assessment and risk underwriting.
- b) Premium receipt and collection.
- c) Claims reporting and payment.

- d) Investment of premium received.
- e) Such other activity or function as may be directed by the BPK.

2. Permitted Outsourcing Contracts

With prior approval of the BPK, any activity or function of the company that are not restricted pursuant to sub-section 1, above, may be outsourced to another entity. BPK, at its discretion, may approve a proposed outsourcing contract or agreement where it is satisfied that the following requirements are met:

- a) The board of directors of the company submits the proposed contract or agreement with its justification for outsourcing a certain company activity or function. The submission will include all documents as may be required by the BPK in order to provide reasonably adequate information to the BPK to make a review and assessment of the proposal.
- b) The terms of contract or agreement reserve to the company the rights to issue instructions and directions on the manner the function or activity transferred are discharged by the accepting entity.
- c) The outsourcing contract or agreement does not exonerate the company from its responsibility and accountability to its policyholders and other creditors, nor does it diminish the fiduciary liability of the board and the company to the policyholders.
- d) The contract or agreement will provide that BPK has the power to carry out "on-site" inspections on the outsourced functions or activities to ensure that they are carried out in accordance with the Insurance Regulations and these Rules as well as directives issued by the BPK consistent thereto.
- e) If the accepting entity is located in foreign jurisdiction, the contract or agreement must grant supplementary supervision to the BPK and such contract or agreement must be signed and conformed to by the relevant foreign authority.
- f) If the outsourcing involves the transfer of functions or activities to a subsidiary or affiliate, the contractual arrangements are suitable to the main business of the receiving subsidiary or affiliate and that the transaction complies with the requirements prescribed

under Rule 56 (Related Party Transactions) of these rules.

- g) The contract or agreement contains all other provisions as may be required by the BPK.

3. Outsourcing Contract in Favor of an Applicant or Licensed Company

If the outsourcing contract or agreement transfers to a licensed company certain activities or functions from another entity, prior approval by the BPK must also be obtained. BPK, at its discretion, may approve the contract or agreement if it is satisfied that:

- a) The outsourced activity or function is a part of the insurance business, or is an insurance related business activity of the company pursuant to Rule 47, of these rules.
- b) If the outsourcing transaction involves contracting parties belonging to the same group, and the receiving entity is a licensed company, as defined under this rule, the applicable provisions of sub-section 2 of this Section must also be complied with, in addition to the requirement prescribed under paragraph a), above.

Section 4 Compliance

1. Effect of Non-Approval by the BPK

If the proposed affiliation or outsourcing contract or agreement is denied by the BPK or if the BPK objects to any of its contents or if the BPK prescribes a certain provision to be incorporated in the contract or agreement, BPK shall so notify the company in writing specifying its objections and/or its requirements. If such objections cannot be taken into account, or if such additional provisions cannot be included, the affiliation or outsourcing contract or agreement will not be approved by the BPK and may not be executed, adopted or implemented by the company.

If a company executes, adopts or implements an affiliation or outsourcing relationship with another entity without the definitive contract or agreement duly approved by the BPK:

- a) The application for license of the company is immediately denied.

- b) The license of the company will be revoked and the BPK will take further steps as are necessary consistent with the provisions of the Insurance Regulation and these Rules.

Section 5
Entry into Force

This present rule shall enter into force on April 1, 2002.

David Weatherman
Acting Managing Director