



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 56 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 27 on Related Party Transactions

Section 1

1. Scope of Rule

This rule applies to all insurance companies and insurance intermediaries licensed by the BPK.

2. Legal Authority

This rule implements Section 56, Chapter VIII of the Insurance Regulations.

3. Definitions

In this rule, the following terms mean:

“Affiliates” or “affiliated companies” have the meaning as defined under Section 1 of the insurance regulation. In this rule the term affiliate of affiliated companies includes subsidiary or subsidiaries.

“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.

“Committee” refers to the Conduct Review Committee created by the board as prescribed under Rule 24, on corporate governance.

“Licensed Company” or “company” refers to either, or both, an insurance company or an insurance intermediary.

“Prescribed class of employees” shall be defined by the Conduct Review Committee, which must include all employees having custody of company assets or having access to financial information of the company.

“Related party transaction” refers, in general, to a transaction between a licensed company and a person related to that licensed company. In particular, it refers to transactions between and among related parties, as defined under this Rule.

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

“Subsidiary” have the meaning as defined under Section 1 of the insurance regulation. In this rule, the term subsidiary includes affiliate or affiliated company.

Section 2

Adoption of Policies and Procedures in Regard to Related Party Transactions

1. Responsibility of the Board

One of the requirements for the discharge of the fiduciary responsibilities of the board is the prohibition and control of related party transactions affecting the company. The board is required to immediately create the Conduct Review Committee in accordance with Rule 24. The committee shall, within forty-five (45) days from its constitution, provide the BPK with written policies and procedures adopted by, and applied in the conduct of business of, the company concerning matters involving related party transactions consistent with Section 56 of the Insurance Regulation and this Rule.

2. Related Party

In Section 56 of the Insurance Regulation and in this Rule:

Related party means a person who:

- a) Is a director or officer of the company or of its affiliate.
- b) Is an employee of the company or of its affiliate and is of the prescribed class or category of employees affected.
- c) Owns or controls, directly or indirectly, 10% or more of the voting shares in the company or in its affiliate.
- d) Is an affiliate of the company.
- e) Is a corporation or legal entity in which the company or its affiliate owns or controls, directly or indirectly, 10% or more of its voting shares.
- f) Owns or controls, directly or indirectly, 10% or greater interest in a joint venture in which the company or its affiliate also owns or controls, directly or indirectly 10% or greater interest.
- g) Owns or controls, directly or indirectly, 10% or greater interest in a partnership in which the company or its affiliate also owns or controls, directly or indirectly, 10% or greater interest.
- h) Is a practitioner who is an auditor or actuary or consultant of the company or its affiliate?
- i) Is actively engaged in auditing the company or its affiliate or he is a partner in a partnership that is an auditor of the company or its affiliate.
- j) Is a director, officer or employee of a prescribed class, in a corporation that is a related party under paragraphs c) and d) above.
- k) Is a spouse of an individual who is a related party under paragraphs a), b), c) and d) above, or under sub-section 3 of this Section.
- l) Is a relative or an individual, or the spouse of such individual, who is a related party under paragraphs a), b), c) or d) above and who occupies the same home as that person.
- m) Is a corporation in which a person who is a related party under paragraphs a) to g) above or paragraph j) to l) above, or under sub-section 3 of this Section has or controls, directly or indirectly, more than fifty (50%) percent of the votes that may be cast in the election of directors of the corporation.

3. Continuation of related party status

An individual who, having been a related party, ceased to be one of those mentioned under sub-section 2 of this Section, nevertheless continues, for the purposes of this rule, to be a related party of the company for a period of 12 months commencing on the date the individual ceased to be a related party under Sub-section 2 of this rule.

Section 3 **Restrictions on Self-dealing as a Fiduciary**

1. Investment and Use of Fiduciary Assets

Except as provided under this rule or as may be allowed by subsequent directives of the BPK, a company that holds assets in a fiduciary capacity must not:

- a) Invest that asset or any part of it in securities or obligations issued by the company or by a related party of the company.
- b) Use that asset or any part of it in any transaction with a related party of the company.

2. Company Acting as Fiduciary in Trusts or Estate

The company may act as an administrator, receiver or in any other fiduciary capacity in a trust or estate in which securities are held that were issued by the company or any of its related party, if the following guidelines are met:

- a) The securities were acquired by a person for whom the trust or estate acts as fiduciary; or if the securities were already held in the trust or estate; before the company assumed fiduciary responsibility for such trust or estate.
- b) The company or its related party must not sell or vote the securities or refuse an offer for them without the written approval of the committee; and that the committee must enter the reasons for the sale, vote or refusal in its minutes.
- c) The committee shall, within the first fifteen (15) days of each year, provide a written report to the board on securities that have been:
 - (i) Issued by the company or by its related party, and held in trust or estate by the company as a fiduciary during the immediately preceding financial year, and
 - (ii) Give reasons for any approvals given or denied under paragraph

b) above.

Section 4 Restrictions on Related Party Transactions

1. General Restrictions

Except as permitted under this rule or by written approval of the BPK:

- a) The company or its affiliate, directly or indirectly, must not give business to a related party by way of loan, guarantee, the provision of security or investment of its assets or any part of it, or enter into any other transaction with a related party.
- b) A related party or its affiliate, directly or indirectly, must not give business to the company by way of loan, guarantee, the provision of security or investment of its assets or any part of it, or enter into any other transaction with the company.

2. Specific Restrictions

A company or its affiliate, directly or indirectly, must not:

- a) Enter into or carry out specific transaction with a related party that is approved by the committee for consideration that is materially greater or less than the fair market value specified by the committee in its written approval.
- b) Enter or carry out transaction in a class of transactions with a related party approved by the committee that is for a consideration materially greater or less than the fair market value.
- c) Whether or not approved by the committee, enter or carry out a transaction with a related party that consists of accounts receivable, loans, or security instruments including assets subject to repurchase agreement.
- d) Whether or not approved by the committee or permitted according to this Rule, dispose of assets, in any consecutive 12 months period, in favor of a related party if value of the assets disposed to any one party is greater than two and one half (2.5%) percent the total assets of the company, or if the aggregate value of all assets disposed in favor of all related parties is greater than five (5%) of the total assets of the company as shown in its latest audited financial statement on file with the BPK, unless with the written consent of the BPK.

Section 5 Certain Permitted Related Party Transactions

1. Permitted Transactions

Unless prohibited pursuant to this rule or the directives of the BPK a company or its affiliate may transact the following with a related party:

- a) Pay or confer a salary, fee, stock option, pension, benefit or incentive benefit to a director or officer of the company or to any person in the class of prescribed employees.
- b) Pay, negotiate or transact the fees and other payments to the company actuary, external auditor or consultants.
- c) Provide to a related party, at not less than fair market value, products or services that the company or its affiliate also provides to the public in the ordinary course of business.
- d) Buy from, or sell to, a related party property having a fair market value that does not exceed the limitations prescribed under paragraph d), sub-section 4 of this rule.
- e) Buy from a related party, at not less than the fair market value, products or services that the related party also provides to the public in the ordinary course of business.

Section 6 The Conduct Review Committee

1. Power to Approve Related Party Transactions

When permitted to do so and not prohibited from doing so by this Rule, the committee may approve in writing related party transactions, if the transaction, at the time it is entered into is either a specific transaction or a class of transactions. The committee must not approve a specific transaction or a class of transaction that is:

- a) Within a class of restricted transaction pursuant to this Rule.
- b) Involves the sale or purchase of an interest in real estate other than a leasehold interest.
- c) Involves the sale or other disposition of a leasehold interest in real estate that would transfer a right to a related party to occupy the real estate for a

fixed or successive renewal terms in excess of ten (10) years.

- d) Involves the exchange of one or more security instruments issued by the company with security instruments issued by a related party when the security instruments exchanged are not publicly traded.
- e) Not consistent with, or reasonably ancillary to, the usual business of the company or its affiliate, as the case may be.
- f) Not in the best interest of the company, or if entered into by an affiliate, not in the best interest of the company and its affiliate.

2. Propriety of the Transaction

The committee shall not approve any transaction unless it is satisfied on reasonable grounds that:

- a) The transaction is entered into and carried out for consideration, paid by the company or its affiliate, not materially greater than fair market value.
- b) The transaction is entered into and carried out for a consideration, received by the company or its affiliate, not materially less than fair market value.
- c) In the transaction involving a loan or loans by the company or its affiliate:
 - (i) The loan or loans must be secured by a charge on property that has a fair market value to satisfy a loan to value ratio of 80% or greater.
 - (ii) The property charged as security is not of low quality asset category.
 - (iii) The committee in approving the transaction, must specify in its written approval the amount constituting the fair market value of the property charged as security and the reasons that it believes the property charged as security is not of a low quality asset.

Section 7 Disclosure of Related Party Interests

1. To Whom Disclosure is Due

A related party of the company who is directly or indirectly interested in a transaction or a proposed transaction with the company or its affiliate for which under these Rules require the approval of the committee or the consent of the BPK, must disclose in writing to the board the nature and extent of the related

party's interests in the transaction. All such disclosures submitted to the board must be taken up and recorded in the minutes of the relevant board meetings.

2. Parties Required to Make Disclosures

The following parties must make disclosures required under this rule:

- a) The related party of the company or its affiliate, generally.
- b) In the case of an individual who is deemed a related party because of he or she is the spouse of a related party or a relative of a related party and living in the same house with the related party, disclosure must be made by the related party with whom the relationship gave rise to the individual being deemed a related party.
- c) The director or officer of the company or its affiliate who is also a director or officer of, or who owns more than 50% of the voting shares in, a corporation interested in a transaction or proposed transaction with the company or its affiliate, must disclose his relationship with the interested corporation and the nature and extent of the corporation's interest in the transaction or proposed transaction.

3. When Disclosure Is Required To Be Made

All disclosures required pursuant to the insurance regulations consistent with this rule must be made promptly under the following guidelines:

- a) At the first meeting of the board of the company after the matter requiring disclosure is known to the related party.
- b) If a meeting described in the situations below occurs at the same time or after the matter requiring disclosure becomes known the person required to make disclosure, the following rules apply:
 - (i) That person must also make the disclosure at the meeting of the board at which the transaction or proposed transaction is first considered.
 - (ii) If a person or corporation of whom that person is a director, was not, at the first meeting of the board, interested in the proposed transaction, that person must make the disclosure at the first meeting of the board after that person or corporation becomes interested.
 - (iii) If a person becomes interested or becomes a director of a interested corporation after the transaction is proposed or entered into, that

person must also make the disclosure at the first meeting after becoming interested or becoming a director of an interested corporation.

- (iv) If a person who is interested in a transaction or proposed transaction later becomes a director of the company or its affiliate, that person must make the disclosure at the first meeting of the board after he becomes a director of the company or its affiliate.
- c) A related party who is required to make a disclosure to the board is, not being a director of the company or its affiliate, must immediately make the disclosure after the interest requiring disclosure is known to him whether or not the company has already proposed or entered into the transaction at that time.
- d) If a person who is interested in a transaction or proposed transaction requiring disclosures becomes a related party after the transaction is proposed or entered into by the company or its affiliate, that person must make the disclosure immediately after the interest requiring disclosure becomes known to that person.

4. Self-Restriction on Conflict of Interest

A director of the company or its affiliate required to make disclosure under this Section must not:

- a) Take part in the discussion or vote on any resolution to approve or deny a transaction in relation to which the disclosure is required.
- b) Be present at any meeting of the board while the board deals or deliberated on the matter transaction to which the disclosure is required.
- c) Influence or attempt to influence the voting on any resolution to approve or deny a transaction to which the disclosure is required.

Section 8 Entry into Force

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

David Weatherman
Acting Managing Director