



Insurance Companies Act 1982

1982 CHAPTER 50

PART II

REGULATION OF INSURANCE COMPANIES

Assets and liabilities attributable to long term business

28 Separation of assets and liabilities attributable to long term business

- (1) Where an insurance company to which this Part of this Act applies carries on ordinary long-term insurance business or industrial assurance business or both of those kinds of insurance business—
 - (a) the company shall maintain an account in respect of that business or, as the case may be, each of those kinds of business; and
 - (b) the receipts of that business or, as the case may be, of each of those kinds of business shall be entered in the account maintained for that business and shall be carried to and form a separate insurance fund with an appropriate name.
- (2) An insurance company to which this Part of this Act applies which carries on ordinary long-term insurance business or industrial assurance business or both of those kinds of business shall maintain such accounting and other records as are necessary for identifying—
 - (a) the assets representing the fund or funds maintained by the company under subsection (1)(b) above (but with out necessarily distinguishing between the funds if more than one); and
 - (b) the liabilities attributable to that business or, as the case may be, each of those kinds of business.

29 Application of assets of company with long term business

- (1) Subject to subsections (2) and (4) and section 55(3) below, the assets representing the fund or funds maintained by an insurance company in respect of its long term business—

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- (a) shall be applicable only for the purposes of that business, and
 - (b) shall not be transferred so as to be available for other purposes of the company except where the transfer constitutes reimbursement of expenditure borne by other assets (in the same or the last preceding financial year) in discharging liabilities wholly or partly attributable to long term business.
- (2) Where the value of the assets mentioned in subsection (1) above is shown, by an investigation to which section 18 above applies or which is made in pursuance of a requirement imposed under section 42 below, to exceed the amount of the liabilities attributable to the company's long term business the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (3) Subsection (2) above shall not authorise a transfer or other application of assets by reference to an actuarial investigation at any time after the date when the abstract of the actuary's report of the investigation has been deposited with the Secretary of State in accordance with section 22(1) above or section 42(4) below.
- (4) Nothing in subsection (1) above shall preclude an insurance company from exchanging, at fair market value, assets representing a fund maintained by the company in respect of its long, term business for other assets of the company.
- (5) Any mortgage or charge (including—
- (a) a charge imposed by a court on the application of a judgment creditor,
 - (b) in Scotland, a charge imposed by way of diligence, and
 - (c) a charge imposed by the Enforcement of Judgments Office in Northern Ireland)
- shall be void to the extent to which it contravenes subsection (1) above.
- (6) Money from a fund maintained by a company in respect of its long term business may not be used for the purposes of any other business of the company notwithstanding any arrangement for its subsequent repayment out of the receipts of that other business.
- (7) No insurance company to which this Part of this Act applies, and no company of which any such insurance company is a subsidiary, shall declare a dividend at any time when the value of the assets representing the fund or funds maintained by the insurance company in respect of its long term business, as determined in accordance with any applicable valuation regulations, is less than the amount of the liabilities attributable to that business as so determined.

30 Allocations to policy holders

- (1) Where in the case of an insurance company to which this Part of this Act applies—
- (a) there is an established surplus in which long term policy holders of any category are eligible to participate, and
 - (b) an amount has been allocated to policy holders of that category in respect of a previously established surplus in which policy holders of that category were eligible to participate,

the company shall not by virtue of section 29(2) above transfer or otherwise apply assets representing any part of the surplus mentioned in paragraph (a) above unless the company has either allocated to policy holders of that category in respect of that surplus an amount not less than the relevant minimum, or complied with the requirements of subsection (3) below and made to those policy holders any allocation of which notice is given under paragraph (a) of that subsection.

- (2) Subject to subsections (6) and (7) below, the relevant minimum is the amount represented by the formula

$$\frac{b \times c}{a} - \frac{c}{200}$$

where—

a is the last previously established surplus in respect of which an amount was allocated to policy holders of the category in question ;

b is the amount so allocated ; and

c is the surplus referred to in subsection (1)(a).

- (3) The requirements of this subsection are that the company—
- (a) has served on the Secretary of State a written notice stating that it proposes to make no allocation or an allocation of an amount (specifying it) which is smaller than the relevant minimum ; and
 - (b) has published a statement approved by the Secretary of State in the London, Edinburgh and Belfast Gazettes and in such other ways as he may have directed,

and that a period of not less than fifty-six days has elapsed since the date, or the last date, on which the company has published the statement mentioned in paragraph (b) above as required by or under that paragraph.

- (4) In this section " established surplus" means an excess of assets representing the whole or a particular part of the fund or funds maintained by the company in respect of its long term business over the liabilities, or a particular part of the liabilities, of the company attributable to that business as shown by an investigation to which section 18 above applies or which is made in pursuance of a requirement imposed under section 42 below.

- (5) For the purposes of this section an amount is allocated to policy holders if, and only if—
- (a) bonus payments are made to them ; or
 - (b) reversionary bonuses are declared in their favour or a reduction is made in the premiums payable by them ;

and the amount of the allocation is, in a case within paragraph (a) above, the amount of the payments and, in a case within paragraph (b) above, the amount of the liabilities assumed by the company in consequence of the declaration or reduction.

- (6) For the purposes of this section the amount of any bonus payments made in anticipation of an established surplus shall be treated as an amount allocated in respect of the next established surplus in respect of which an amount is allocated to eligible policy holders generally; and for the purposes of subsection (2) above the amount of any surplus in respect of which such an allocation is made shall be treated as increased by the amount of any such payments.

- (7) Subsection (1) above shall not authorise the application for purposes other than those mentioned in section 29(1) above of assets representing any part of the surplus mentioned in subsection (1)(a) above which the company has decided to carry forward unappropriated; and for the purposes of subsection (2) above the amount of any surplus shall be treated as reduced by any part thereof which the company has decided to carry forward as aforesaid.

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- (8) For the purposes of subsection (1) above policy holders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it if it were carried forward unappropriated.

31 Restriction on transactions with connected persons

- (1) Neither an insurance company to which this Part of this Act applies which carries on long term business nor a subordinate company of any such insurance company shall enter into a transaction to which this section applies—

- (a) at a time when the aggregate of the value of the assets and the amount of the liabilities attributable to such transactions already entered into by the insurance company and its subordinate companies exceeds the prescribed percentage of the total amount standing to the credit of the insurance company's long term funds ; or
- (b) at any other time when the aggregate of the value of those assets and the amount of those liabilities would exceed that percentage if the transaction were entered into.

- (2) This section applies to any transaction entered into by any such insurance company as is mentioned in subsection (1) above (whether or not itself a subordinate company of another company), being a transaction under which—

- (a) a person connected with the insurance company will owe it money; or
- (b) the insurance company acquires shares in a company which is a person connected with it; or
- (c) the insurance company undertakes a liability to meet an obligation of a person connected with it or to help such a person to meet an obligation,

if the right to receive the money would constitute a long term asset of the insurance company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.

- (3) Without prejudice to subsection (2) above, this section applies to any transaction entered into by a subordinate company of any such insurance company as is mentioned in subsection (1) above, being a transaction under which—

- (a) the insurance company or a person connected with it will owe money to the subordinate company (not being money owed by the insurance company which can be properly paid out of its long term funds); or
- (b) the subordinate company acquires shares in the insurance company or in a company which is a person connected with the insurance company; or
- (c) the subordinate company undertakes a liability to meet an obligation of the insurance company or of a person connected with that company or to help the insurance company or such a person to meet an obligation;

but where the subordinate company is itself such an insurance company as is mentioned in subsection (1) above this section shall not by virtue of this subsection apply to any such transaction if the right to receive the money would constitute a long term asset of the subordinate company, the acquisition is made out of its long term funds or the liability would fall to be discharged out of those funds, as the case may be.

- (4) In this section "subordinate company", in relation to any such insurance company as is mentioned in subsection (1) above, means—

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- (a) a company having equity share capital some or all of which is held by the insurance company as part of its long term assets where the share capital so held by the insurance company—
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on the insurance company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company;
- (b) a company having equity share capital some or all of which is held by another company which is itself a subordinate company of the insurance company where the share capital held by that other company—
 - (i) amounts to more than half in nominal value of that share capital; and
 - (ii) confers on that other company the power to appoint or remove the holders of all or a majority of the directorships of the company whose share capital is held and more than one half of the voting power at any general meeting of that company ;

and for the purposes of this subsection share capital held for any person by a nominee shall (except where that person is concerned only in a fiduciary capacity) be treated as held by that person, and share capital held by a person in a fiduciary capacity or by way of security shall be treated as not held by that person.

- (5) For the purposes of this section a person is connected with any such insurance company as is mentioned in subsection (1) above if that person is not a subordinate company of the insurance company but—
- (a) controls, or is a partner of a person who controls, the insurance company; or
 - (b) being a company, is controlled by the insurance company or by another person who also controls the insurance company; or
 - (c) is a director of the insurance company or the wife or husband or a minor son or daughter of such a director ;

and for the purposes of this subsection a person controls a company if he is a controller of it within the meaning of section 7(4)(c) above.

- (6) For the purposes of this section the value of any assets and the amount of any liabilities shall be determined in accordance with any applicable valuation regulations.

- (7) In this section—

" company" (except in the expression " insurance company ") includes any body corporate ;

" equity share capital" means, in relation to a company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution ;

" liability " includes a contingent liability ;

" long term assets " and " long term funds ", in relation to an insurance company, mean respectively assets representing the fund or funds maintained by the company in respect of its long term business and that fund or those funds;

" the prescribed percentage " means 5 per cent, or such greater percentage as may from time to time be prescribed for the purposes of this section by regulations;

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" share " has the same meaning as in the Companies Act 1948 or the Companies Act (Northern Ireland) 1960 ;

" son" includes step-son, " daughter" includes stepdaughter, and " minor", in relation to Scotland, includes pupil and, (without prejudice to section 39(6) of the Adoption Act 1976 and section 39(4) of the Adoption (Scotland) Act 1978) in relation to Northern & Ireland, " son " includes step-son and adopted son and " daughter" includes step-daughter and adopted daughter.

- (8) This section shall not be construed as making any transaction unenforceable as between the parties thereto or as otherwise making unenforceable any rights or liabilities in respect of property.