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STATUTORY INSTRUMENTS

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**2004 No. 353**

**The Insurers (Reorganisation and  
Winding Up) Regulations 2004**

**PART V**

**REORGANISATION OR WINDING UP OF UK  
INSURERS: RECOGNITION OF EEA RIGHTS**

**Application of this Part**

**34.—(1)** This Part applies—

- (a) where a decision with respect to the approval of a proposed voluntary arrangement having a qualifying purpose is made under section 4A of the 1986 Act or Article 17A of the 1989 Order on or after 20th April 2003 in relation to a UK insurer;
  - (b) where an administration order made under section 8 of the 1986 Act on or after 20th April 2003 or, on or after 15th September 2003, made under paragraph 13 of Schedule B1 is in force in relation to a UK insurer;
  - (c) where on or after 20th April 2003 the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992;
  - (d) where a UK insurer is subject to a relevant winding up;
  - (e) where a provisional liquidator is appointed in relation to a UK insurer on or after 20th April 2003.
- (2) For the purposes of paragraph (1)(a), a voluntary arrangement has a qualifying purpose if it—
- (a) varies the rights of the creditors as against the insurer and is intended to enable the insurer, and the whole or any part of its undertaking, to survive as a going concern; or
  - (b) includes a realisation of some or all of the assets of the insurer to which it relates and the distribution of the proceeds to creditors, with a view to terminating the whole or any part of the business of that insurer.
- (3) For the purposes of paragraph (1)(d), a winding up is a relevant winding up if—
- (a) in the case of a winding up by the court, the winding up order is made on or after 20th April 2003; or
  - (b) in the case of a creditors' voluntary winding up, the liquidator is appointed in accordance with section 100 of the 1986 Act, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order on or after 20th April 2003.

### **Application of this Part: assets subject to a section 425 or Article 418 compromise or arrangement**

**35.**—(1) For the purposes of this Part, the insolvent estate of a UK insurer shall not include any assets which at the commencement date are subject to a relevant section 425 or Article 418 compromise or arrangement.

(2) In this regulation—

- (a) “assets” has the same meaning as “property” in section 436 of the 1986 Act or Article 2(2) of the 1989 Order;
- (b) “commencement date” has the meaning given in regulation 18(4);
- (c) “insolvent estate” in England and Wales and Northern Ireland has the meaning given by Rule 13.8 of the Insolvency Rules or Rule 0.2 of the Insolvency Rules (Northern Ireland) and in Scotland means the company’s assets;
- (d) “relevant section 425 or Article 418 compromise or arrangement” means—
  - (i) a section 425 or Article 418 compromise or arrangement which was sanctioned by the court before 20th April 2003, or
  - (ii) any subsequent section 425 or Article 418 compromise or arrangement sanctioned by the court to amend or replace a compromise or arrangement of the kind mentioned in paragraph (i).

### **Interpretation of this Part**

**36.**—(1) For the purposes of this Part—

- (a) “affected insurer” means a UK insurer which is the subject of a relevant reorganisation or a relevant winding up;
- (b) “relevant reorganisation or a relevant winding up” means any voluntary arrangement, administration order, winding up, or order referred to in regulation 34(1)(d) to which this Part applies; and
- (c) “relevant time” means the date of the opening of a relevant reorganisation or a relevant winding up.

(2) In this Part, references to the opening of a relevant reorganisation or a relevant winding up mean—

- (a) in the case of winding up proceedings—
  - (i) in the case of a winding up by the court, the date on which the winding up order is made, or
  - (ii) in the case of a creditors' voluntary winding up, the date on which the liquidator is appointed in accordance with section 100 of the 1986 Act<sup>(1)</sup>, paragraph 83 of Schedule B1 or Article 86 of the 1989 Order;
- (b) in the case of a voluntary arrangement, the date when a decision with respect to that voluntary arrangement has effect in accordance with section 4A(2) of the 1986 Act or Article 17A(2) of the 1989 Order;
- (c) in a case where an administration order under paragraph 13 of Schedule B1 is in force, the date of the making of that order;
- (d) in a case where an administrator is appointed under paragraphs 14 or 22 of Schedule B1 the date on which that appointment takes effect;

(1) Section 4A was inserted into the 1986 Act by the [Insolvency Act 2000\(c. \)](#), section 2(a) and Schedule 2 paragraphs 1 and 5.

- (e) in a case where the court reduces the value of one or more of the contracts of a UK insurer under section 377 of the 2000 Act or section 24(5) of the Friendly Societies Act 1992, the date the court exercises that power; and
- (f) in a case where a provisional liquidator has been appointed, the date of that appointment, and references to the time of an opening must be construed accordingly.

### **EEA rights: applicable law in the winding up of a UK insurer**

**37.**—(1) This regulation is subject to the provisions of regulations 38 to 47.

(2) In a relevant winding up, the matters mentioned in paragraph (3) in particular are to be determined in accordance with the general law of insolvency of the United Kingdom.

(3) Those matters are—

- (a) the assets which form part of the estate of the affected insurer;
- (b) the treatment of assets acquired by, or devolving on, the affected insurer after the opening of the relevant winding up;
- (c) the respective powers of the affected insurer and the liquidator or provisional liquidator;
- (d) the conditions under which set-off may be revoked;
- (e) the effects of the relevant winding up on current contracts to which the affected insurer is a party;
- (f) the effects of the relevant winding up on proceedings brought by creditors;
- (g) the claims which are to be lodged against the estate of the affected insurer;
- (h) the treatment of claims against the affected insurer arising after the opening of the relevant winding up;
- (i) the rules governing—
  - (i) the lodging, verification and admission of claims,
  - (ii) the distribution of proceeds from the realisation of assets,
  - (iii) the ranking of claims,
  - (iv) the rights of creditors who have obtained partial satisfaction after the opening of the relevant winding up by virtue of a right in rem or through set-off;
- (j) the conditions for and the effects of the closure of the relevant winding up, in particular by composition;
- (k) the rights of creditors after the closure of the relevant winding up;
- (l) who is to bear the cost and expenses incurred in the relevant winding up;
- (m) the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors.

(4) In this regulation, “relevant winding up” has the meaning given by regulation 34(3).

### **Employment contracts and relationships**

**38.**—(1) The effects of a relevant reorganisation or a relevant winding up on any EEA employment contract and any EEA employment relationship are to be determined in accordance with the law of the EEA State to which that contract or that relationship is subject.

(2) In this regulation, an employment contract is an EEA employment contract, and an employment relationship is an EEA employment relationship, if it is subject to the law of an EEA State.

**Contracts in connection with immovable property**

39. The effects of a relevant reorganisation or a relevant winding up on a contract conferring the right to make use of or acquire immovable property situated within the territory of an EEA State are to be determined in accordance with the law of that State.

**Registrable rights**

40. The effects of a relevant reorganisation or a relevant winding up on rights of the affected insurer with respect to—

- (a) immovable property,
- (b) a ship, or
- (c) an aircraft

which is subject to registration in a public register kept under the authority of an EEA State are to be determined in accordance with the law of that State.

**Third parties' rights in rem**

41.—(1) A relevant reorganisation or a relevant winding up shall not affect the rights in rem of creditors or third parties in respect of tangible or intangible, movable or immovable assets (including both specific assets and collections of indefinite assets as a whole which change from time to time) belonging to the affected insurer which are situated within the territory of an EEA State at the relevant time.

(2) The rights in rem referred to in paragraph (1) shall in particular include—

- (a) the right to dispose of the assets in question or have them disposed of and to obtain satisfaction from the proceeds of or the income from those assets, in particular by virtue of a lien or a mortgage;
- (b) the exclusive right to have a claim met out of the assets in question, in particular a right guaranteed by a lien in respect of the claim or by assignment of the claim by way of guarantee;
- (c) the right to demand the assets in question from, or to require restitution by, any person having possession or use of them contrary to the wishes of the party otherwise entitled to the assets;
- (d) a right in rem to the beneficial use of assets.

(3) A right, recorded in a public register and enforceable against third parties, under which a right in rem within the meaning of paragraph (1) may be obtained, is also to be treated as a right in rem for the purposes of this regulation.

(4) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

**Reservation of title agreements etc.**

42.—(1) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer purchasing an asset shall not affect the seller's rights based on a reservation of title where at the time of that opening the asset is situated within the territory of an EEA State.

(2) The opening of a relevant reorganisation or a relevant winding up in relation to an insurer selling an asset, after delivery of the asset, shall not constitute grounds for rescinding or terminating the sale and shall not prevent the purchaser from acquiring title where at the time of that opening the asset sold is situated within the territory of an EEA State.

(3) Paragraphs (1) and (2) do not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

#### **Creditors' rights to set off**

**43.**—(1) A relevant reorganisation or a relevant winding up shall not affect the right of creditors to demand the set-off of their claims against the claims of the affected insurer, where such a set-off is permitted by the applicable EEA law.

(2) In paragraph (1), “applicable EEA law” means the law of the EEA State which is applicable to the claim of the affected insurer.

(3) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

#### **Regulated markets**

**44.**—(1) Without prejudice to regulation 40, the effects of a relevant reorganisation measure or winding up on the rights and obligations of the parties to a regulated market operating in an EEA State must be determined in accordance with the law applicable to that market.

(2) Paragraph (1) does not preclude actions for voidness, voidability or unenforceability of legal acts detrimental to creditors under the general law of insolvency of the United Kingdom, as referred to in regulation 37(3)(m).

(3) For the purposes of this regulation, “regulated market” has the meaning given by Council Directive (93/22/EEC) of 10th May 1993 on investment services in the securities field(2).

#### **Detrimental acts pursuant to the law of an EEA State**

**45.**—(1) In a relevant reorganisation or a relevant winding up, the rules relating to detrimental transactions shall not apply where a person who has benefited from a legal act detrimental to all the creditors provides proof that—

- (a) the said act is subject to the law of an EEA State; and
- (b) that law does not allow any means of challenging that act in the relevant case.

(2) For the purposes of paragraph (1), “the rules relating to detrimental transactions” means any provisions of the general law of insolvency relating to the voidness, voidability or unenforceability of legal acts detrimental to all the creditors, as referred to in regulation 37(3)(m).

#### **Protection of third party purchasers**

**46.**—(1) This regulation applies where, by an act concluded after the opening of a relevant reorganisation or a relevant winding up, an affected insurer disposes for a consideration of—

- (a) an immovable asset situated within the territory of an EEA State;
- (b) a ship or an aircraft subject to registration in a public register kept under the authority of an EEA State; or
- (c) securities whose existence or transfer presupposes entry into a register or account laid down by the law of an EEA State or which are placed in a central deposit system governed by the law of an EEA State.

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(2) O.J. No. L141, 11.6.93, p.27, as amended by European Parliament and Council Directive 95/26/EC (O.J. No. L84, 26.3.97, p.22).

(2) The validity of that act is to be determined in accordance with the law of the EEA State within whose territory the immovable asset is situated or under whose authority the register, account or system is kept, as the case may be.

### **Lawsuits pending**

**47.**—(1) The effects of a relevant reorganisation or a relevant winding up on a relevant lawsuit pending in an EEA State shall be determined solely in accordance with the law of that EEA State.

(2) In paragraph (1), “relevant lawsuit” means a lawsuit concerning an asset or right of which the affected insurer has been divested.