



# Insurance Companies Act 1974

## 1974 CHAPTER 49

### PART I

#### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

##### *Preliminary*

#### **1 Classes of insurance business relevant for Part I**

- (1) The classes of insurance business relevant for the purposes of this Part of this Act are—
- (a) ordinary long-term insurance business;
  - (b) industrial assurance business;
  - (c) liability insurance business;
  - (d) marine, aviation and transport insurance business;
  - (e) motor vehicle insurance business;
  - (f) pecuniary loss insurance business;
  - (g) personal accident insurance business;
  - (h) property insurance business.
- (2) In this Act "long term business" means insurance business of either or both of the classes mentioned in paragraphs (a) and (b) of subsection (1) above and includes, in relation to any insurance company, insurance business carried on by the company as incidental only to any such class of business; and "general business" means insurance business not being long term business.

##### *Authorised insurers*

#### **2 Persons permitted to carry on insurance business**

- (1) No person shall carry on in Great Britain insurance business of a class relevant for the purposes of this Part of this Act, other than industrial assurance business, except—

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- (a) a body corporate which is authorised under section 3 below to carry on business of that class ;
  - (b) an unincorporated body of persons which is authorised under that section to carry on business of that class, being a body which immediately before 3rd November 1966 was carrying on insurance business (whether of that class or not) in Great Britain;
  - (c) a member of Lloyd's, or of any other association of underwriters approved for the purposes of this Part of this Act by the Secretary of State;
  - (d) a body registered under the Acts relating to friendly societies; or
  - (e) a trade union or employers' association (within the meaning of the Trade Union and Labour Relations Act 1974) where the insurance business carried on by the union or association is limited to the provision for its members of provident benefits or strike benefits.
- (2) No person shall carry on in Great Britain industrial assurance business except—
- (a) a body corporate which is authorised under section 3 below to carry on such business; or
  - (b) a society registered under the Friendly Societies Act 1896, being a friendly society within the meaning of that Act.
- (3) Subsection (1) above shall not preclude any person from carrying on pecuniary loss insurance business if he carries it on solely in the course of carrying on, and for the purposes of, banking business.
- (4) The Acts mentioned in subsection (1)(d) above include Acts of the Parliament of Northern Ireland and Measures of the Northern Ireland Assembly, and the reference in subsection (2)(b) above to the Friendly Societies Act 1896 includes a reference to that Act as it applies to Northern Ireland and to any enactment of the Parliament of Northern Ireland or Measure of the Northern Ireland Assembly re-enacting that Act with or without modifications.

### **3 Authorisations**

- (1) A body corporate and, subject to subsection (2) below, an unincorporated body of persons shall be authorised to carry on in Great Britain insurance business of a class relevant for the purposes of this Part of this Act if either—
- (a) it was carrying on in Great Britain insurance business of that class immediately before 3rd November 1966 (and was not then carrying on business in contravention of section 2(1) of the Insurance Companies Act 1958); or
  - (b) it is authorised by the Secretary of State to carry on insurance business of that class.
- (2) An unincorporated body of persons shall not be authorised under either paragraph of subsection (1) above to carry on industrial assurance business and no such body shall be authorised under paragraph (b) of that subsection to carry on insurance business of any other class unless it was carrying on in Great Britain insurance business (whether of that class or not) immediately before 3rd November 1966.

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#### 4 Margin of solvency required for authorisation

- (1) Subject to section 8 below, the Secretary of State shall not issue an authorisation under section 3(1)(b) above (hereafter referred to as " an authorisation ") in respect of any body unless he is satisfied—
- (a) in a case in which the body is, when the authorisation is applied for, carrying on (whether within or outside Great Britain) general business and has completed its first financial year, that the value of its assets exceeds the amount of its liabilities by the relevant amount;
  - (b) in any other case, that it has assets whose value amounts (after deduction, if it has liabilities, of the amount thereof) to not less than £50,000.
- (2) For the purposes of subsection (1)(a) above the relevant amount is, subject to subsection (3) below, in each of the cases set out in the first column of the following Table, the amount specified in relation to that case in the second column of that Table.

TABLE

Case	Relevant Amount
1. The general premium income of the body in its last preceding financial year did not exceed £250,000.	£50,000.
2. The said income in that year exceeded £250,000 but did not exceed £2,500,000.	One fifth of the said income in that year.
3. The said income in that year exceeded £2,500,000.	The aggregate of £500,000 and one tenth of the amount by which the said income in that year exceeded £2,500,000.

- (3) In the case of a body whose last preceding financial year was not a period of twelve months (other than a body which has not completed its second financial year and whose first financial year was a period of less than twelve months) subsection (2) above shall have effect—
- (a) with the substitution for each number specified in the Table (other than 50,000 and 500,000) of a number equal to the product derived by multiplying the number so specified by the relevant fraction ; and
  - (b) with the substitution for each fraction specified in that Table of a fraction equal to the quotient derived by dividing the fraction so specified by the relevant fraction;
- and for the purposes of this subsection the relevant fraction is a fraction whose numerator is the number of days in the body's last preceding financial year and whose denominator is 365.
- (4) For the purposes of this section—
- (a) in computing the amount of the liabilities of a body, all contingent and prospective liabilities shall be taken into account but not liabilities in respect of share capital; and
  - (b) the general premium income of a body in any year shall be taken to be the net amount, after deduction of any premiums paid by the body for reinsurance, of the premiums received by the body in that year in respect of all insurance business other than long term business.

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- (5) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsection (6) below, be determined in accordance with any applicable regulations made under section 78 below (hereafter referred to as "valuation regulations"), and subsection (4)(a) above shall have effect subject to any such regulations made by virtue of subsection (2) of that section.
- (6) For the purposes of this section the amount of the liabilities of the long term business of a body at any time shall be taken to be—
- (a) an amount equal to the total amount at that time standing to the credit of the fund or funds maintained by the body in respect of its long term business; or
  - (b) the amount of those liabilities at that time as determined in accordance with any applicable valuation regulations,
- whichever is the greater.

## **5 Paid up share capital required for authorisation**

Subject to section 8 below, the Secretary of State shall not issue an authorisation in respect of any body corporate (other than a registered society) which has a share capital unless the amount paid up thereon is £100,000 or more.

## **6 Reinsurance arrangements required for authorisation**

The Secretary of State shall not issue an authorisation in respect of any body unless he is satisfied, as regards each class of risks against which, in the course of carrying on business, the body insures or proposes to insure persons—

- (a) that adequate arrangements are in force, or will be made, for the reinsurance of risks of that class against which persons are, or are to be, insured by the body in the course of carrying on business; or
- (b) that it is justifiable not to make arrangements for that purpose.

## **7 No authorisation for body under control etc. of unfit persons**

- (1) The Secretary of State shall not issue an authorisation in respect of any body ("the relevant body") if it appears to him that any director, controller or manager of that body is not a fit and proper person to be a director, controller or manager of that body, as the case may be.
- (2) In this section "controller", in relation to the relevant body, means—
- (a) a managing director of the relevant body or of a body corporate of which it is a subsidiary;
  - (b) a chief executive of the relevant body or of a body corporate, being an insurance company, of which it is a subsidiary;
  - (c) a person—
    - (i) in accordance with whose directions or instructions the directors of the relevant body or of a body corporate of which it is a subsidiary (or any of them) are accustomed to act; or
    - (ii) who, either alone or with any associate or associates, is entitled to exercise, or control the exercise of, one third or more of the voting power at any general meeting of the relevant body or of a body corporate of which it is a subsidiary.

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- (3) In this section " manager ", in relation to the relevant body, means a person (other than a chief executive) employed by that body who, under the immediate authority of a director or chief executive of that body—
- (a) exercises managerial functions; or
  - (b) is responsible for maintaining accounts or other records of that body,
- not being a person whose functions relate exclusively to business conducted from a place of business outside Great Britain.
- (4) Subject to subsection (5) below, in this section "chief executive ", in relation to the relevant body or a body corporate of which it is a subsidiary, means a person employed by the relevant body or that body corporate, who, either alone or jointly with one or more other persons, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the relevant body or that body corporate.
- (5) In relation to a relevant body incorporated outside Great Britain—
- (a) the reference in paragraph (a) of subsection (2) above to a managing director of that body includes a reference to a person who is a managing director of that body in respect of so much of its insurance business as is carried on within Great Britain; and
  - (b) the reference in paragraph (b) of that subsection to a chief executive of that body includes a reference to a person employed by that body who, either alone or jointly with one or more other persons, is responsible (whether or not under the immediate authority of the directors) for the conduct of the whole of the insurance business carried on by that body within Great Britain but, if he is responsible also for the conduct of insurance business carried on by it elsewhere, only if there is no other person subordinate to him who is responsible for the conduct of the whole of the insurance business carried on by it within Great Britain.
- (6) In this section "associate", in relation to any person, means—
- (a) the wife or husband or minor son or daughter of that person;
  - (b) any company of which that person is a director ;
  - (c) any person who is an employee or partner of that person;
  - (d) if that person is a company—
    - (i) any director of that company;
    - (ii) any subsidiary of that company;
    - (iii) any director or employee of any such subsidiary ;
- and for the purposes of this subsection " son " includes step-son and adopted son, " daughter" includes step-daughter and adopted daughter and " minor ", in relation to Scotland, includes pupil.

## **8 Authorisation for business limited to persons or risks of specified class**

- (1) This section applies to the issue of an authorisation to a body in a case in which the Secretary of State is satisfied that the purpose for which the authorisation is sought is to enable the body to carry on business for the purpose only of insuring persons of a limited class or of insuring persons against risks of a limited category of the class against which insurance cannot, in the absence of the authorisation, lawfully be undertaken by the body in the course of carrying on business in Great Britain.

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- (2) Sections 4 and 5 above shall not apply to an authorisation to which this section applies, but any such authorisation may contain provision imposing on the body either or both of the following obligations—
- (a) to refrain, in the course of carrying on business of the class to which the authorisation relates, from insuring persons other than of a specified class ;
  - (b) to refrain, as aforesaid, from insuring persons against risks other than of a specified class.
- (3) An obligation binding on a body by virtue of subsection (2) above may be discharged by the Secretary of State if it appears to him to be no longer necessary for the obligation to continue in force or may be varied by him at any time.

## **9 Termination of authorisations**

- (1) The Secretary of State may direct that a body shall cease to be authorised under either paragraph of section 3(1) above to carry on insurance business of a class relevant for the purposes of this Part of this Act if that body ceases to carry on in Great Britain insurance business of that class.
- (2) The Secretary of State may direct that a body shall cease to be authorised under paragraph (b) of section 3(1) above to carry on insurance business of a class relevant for the purposes of this Part of this Act if that body does not, before the expiration of the period of twelve months beginning with the day next following that on which the authorisation was issued, commence to carry on in Great Britain insurance business of that class.
- (3) A direction under this section is without prejudice to the subsequent issue of an authorisation to carry on insurance business of the class to which the direction relates.

### *Supplementary*

## **10 Power to amend ss. 4 and 5**

- (1) The Secretary of State may by order amend the provisions of section 4(1) to (4) and section 5 above by substituting for any amount specified in or to be determined in accordance with those provisions (whether as originally enacted or as amended by a previous order under this section) an amount specified in or to be determined in accordance with the order.
- (2) The power to make orders under this section includes power to vary or revoke a previous order, and an order under this section may make different provision in relation to different cases or circumstances.

## **11 Offences under Part I**

- (1) A person who carries on business in contravention of this Part of this Act shall be guilty of an offence.
- (2) A person who for the purpose of obtaining the issue of an authorisation furnishes information which he knows to be false in a material particular or recklessly furnishes information which is false in a material particular shall be guilty of an offence.
- (3) A person guilty of an offence under this section shall be liable—

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- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or to both;
  - (b) on summary conviction, to a fine not exceeding £400.
- (4) A body corporate or unincorporated body of persons shall not be taken to carry on insurance business in contravention of this Part of this Act by reason only of carrying on business for the purpose of discharging liabilities lawfully assumed by it before 27th July 1967.