



Insurance Companies Act 1974

1974 CHAPTER 49

PART II

REGULATION OF INSURANCE COMPANIES

Assets and liabilities attributable to long term business

23 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 long term business of either or both classes—
 - (a) the company shall maintain an account in respect of that class or, as the case may be, each of those classes of long term business ; and
 - (b) the receipts of that class or, as the case may be, of each of those classes of business shall be entered in the account maintained for that class 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 long term business of either or both classes shall maintain such books of account 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 without necessarily distinguishing between the funds if more than one); and
 - (b) the liabilities attributable to that class or, as the case may be, each of those classes of long term business.
- (3) An insurance company to which this Part of this Act applies which was carrying on long term business on 25th July 1973—
 - (a) shall in accordance with regulations made for the purposes of this paragraph make arrangements, during the financial year of the company beginning next after the date on which the regulations are made, for identifying the assets and liabilities of the company as on the last day of that financial year which are attributable to its long term business; and

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(b) shall not be subject to the provisions of subsection (2) above until the day after the end of that financial year.

(4) Regulations made for the purposes of subsection (3)(a) above may make provision for requiring companies to furnish the Secretary of State with certificates of such matters relating to the making of the arrangements, signed by such persons, as may be prescribed.

24 Application of assets of company with long term business

(1) Subject to subsections (2) and (3) and section 47(3) below, the assets representing the fund or funds maintained by an insurance company in respect of its long term business shall be applicable only for the purposes of that business.

(2) Where the value of the assets mentioned in subsection (1) above is shown, by an investigation to which section 14 above applies or which is made in pursuance of a requirement imposed under section 34 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) 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.

(4) Any mortgage or charge (including a charge imposed by a court on the application of a judgment creditor and, in Scotland, a charge imposed by way of diligence) shall be void to the extent to which it contravenes subsection (1) above.

(5) For the avoidance of doubt it is hereby declared that 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.

(6) 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.

25 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 class are eligible to participate; and
 - (b) an amount has been allocated to policy holders of that class in respect of the last preceding established surplus in which policy holders of that class were eligible to participate,

the company shall not apply assets representing any part of the surplus mentioned in paragraph (a) above for purposes other than those mentioned in section 24(1) above unless the company has allocated to policy holders of that class in respect of that surplus either an amount not less than the relevant minimum, or, if the requirements of subsection (3) below have been complied with, the smaller amount specified in the notice served under paragraph (a) of that subsection.

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- (2) Subject to subsections (6) and (7) below, the relevant minimum is an amount calculated by—
- (a) taking an amount which bears to the surplus mentioned in paragraph (a) of subsection (1) above the same proportion as the amount mentioned in paragraph (b) of that subsection bears to the surplus mentioned in that paragraph; and
 - (b) deducting an amount equal to one half of 1 per cent. of the amount of the surplus mentioned in the said paragraph (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 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 and Edinburgh 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 14 above applies or which is made in pursuance of a requirement imposed under section 34 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 that surplus; and for the purposes of subsection (2) above the amount of any surplus shall be treated as increased by the amount of any such payments made in anticipation of it.
- (7) Subsection (1) above shall not authorise the application for purposes other than those mentioned in section 24(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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26 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—

- (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

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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(2)(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 ") and " equity share capital " have the meaning given in section 154(5) of the Companies Act 1948 ;

" 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;

" share " has the same meaning as in the Companies Act 1948;

" son " includes step-son and adopted son, " daughter " includes step-daughter and adopted daughter, and " minor ", in relation to Scotland, includes pupil.

- (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.