



# Insurance Companies Act 1974

## 1974 CHAPTER 49

### PART II

#### REGULATION OF INSURANCE COMPANIES

##### *Insolvency and winding up*

#### **44 Margin of solvency for general business**

- (1) An insurance company to which this Part of this Act applies, being a company which carries on (whether within or outside Great Britain) general business, shall be deemed for the purposes of sections 222 and 399 of the Companies Act 1948 (winding up of company unable to pay its debts) to be unable to pay its debts if—
- (a) at any time in its first financial year the value of its assets does not exceed the amount of its liabilities by, £50,000; or
  - (b) at any time after the expiration of that year the value of its assets does not exceed the amount of its liabilities by the amount which is the relevant amount for the purposes of section 4(1)(a) above ;
- and the provisions of this Act as to winding up shall have effect accordingly.
- (2) For the purposes of this section—
- (a) in computing the amount of the liabilities of an insurance company, 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 an insurance company in any year shall be taken to be the net amount, after deduction of any premiums paid by the company for reinsurance, of the premiums received by the company in that year in respect of insurance business other than long term business.
- (3) For the purposes of this section the value of any assets and the amount of any liabilities shall, subject to subsections (4) and (5) below, be determined in accordance with any applicable valuation regulations, and subsection (2)(a) above shall have effect subject to any such regulations made by virtue of section 78(2) below.

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- (4) In the case of an insurance company which carries on long term business as well as general business the amount of the liabilities of its long term business at any time shall, for the purposes of this section, 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 company 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) Regulations made for the purposes of this section may require that, in every balance sheet prepared under section 13 above by an insurance company carrying on general business, there shall be included a certificate—
- (a) in such form and signed by such persons as may be prescribed by the regulations ; and
  - (b) containing such a statement with respect to the assets and liabilities of the company as may be so prescribed;
- and if any such company fails to comply with the regulations so made the value of its assets shall, in any proceedings under this section for the winding up of the company, be deemed, until the contrary is proved, not to exceed the amount of its liabilities by the amount required by subsection (1) above.
- (6) Nothing in this section shall be taken as affecting the manner in which, on a winding up, any assets or liabilities are required to be dealt with whether by virtue of section 47 below or otherwise.

#### **45 Winding up of insurance companies under Companies Act 1948**

The court may order the winding up, in accordance with the Companies Act 1948, of an insurance company to which this Part of this Act applies and the provisions of that Act shall apply accordingly subject to the modification that the company may be ordered to be wound up on the petition of ten or more policy holders owning policies of an aggregate value of not less than £10,000:

Provided that such a petition shall not be presented except by leave of the court, and leave shall not be granted until a prima facie case has been established to the satisfaction of the court and until security for costs for such amount as the court may think reasonable has been given.

#### **46 Winding up on petition of Secretary of State**

- (1) The Secretary of State may present a petition for the winding up, in accordance with the Companies Act 1948, of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of that Act, on the ground—
- (a) that the company is unable to pay its debts within the meaning of sections 222 and 223 or section 399 of that Act;
  - (b) that the company has failed to satisfy an obligation to which it is or was subject by virtue of this Act or any enactment repealed thereby; or
  - (c) that the company, being under the obligation imposed by section 147 of the said Act of 1948 with respect to the keeping of proper books of account, has

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failed to satisfy that obligation or to produce books kept in satisfaction of that obligation and that the Secretary of State is unable to ascertain its financial position.

- (2) In any proceedings on a petition to wind up an insurance company presented by the Secretary of State under subsection (1) above, evidence that the company was insolvent—
  - (a) at the close of the period to which—
    - (i) the accounts and balance sheet of the company last deposited under section 18 above; or
    - (ii) any statement of the company last deposited under section 21 above, relate; or
  - (b) at any date or time specified in a requirement under section 34 or 36 above, shall be evidence that the company continues to be unable to pay its debts, unless the contrary is proved.
- (3) If, in the case of an insurance company to which this Part of this Act applies, being a company which may be wound up by the court under the provisions of the said Act of 1948, it appears to the Secretary of State that it is expedient in the public interest that the company should be wound up, he may, unless the company is already being wound up by the court, present a petition for it to be so wound up if the court thinks it just and equitable for it to be so wound up.
- (4) Where a petition for the winding up of an insurance company to which this Part of this Act applies is presented by a person other than the Secretary of State, a copy of the petition shall be served on him and he shall be entitled to be heard on the petition.

#### **47 Winding up of insurance companies with long term business**

- (1) No insurance company to which this Part of this Act applies which is an unincorporated body and carries on long term business shall be made the subject of bankruptcy proceedings or, in Scotland, sequestration proceedings.
- (2) No insurance company to which this Part of this Act applies which carries on long term business shall be wound up voluntarily.
- (3) Section 24(1) above shall not 'have effect in relation to the winding up of a company to which section 23(1) above applies but, subject to subsection (4) below and to rules made by virtue of section 51(2) below, in any such winding up—
  - (a) the assets representing the fund or funds maintained by the company in respect of its long term business shall be available only for meeting the liabilities of the company attributable to that business;
  - (b) the other assets of the company shall be available only for meeting the liabilities of the company attributable to its other business.
- (4) Where the value of the assets mentioned in either paragraph of subsection (3) above exceeds the amount of the liabilities mentioned in that paragraph the restriction imposed by that subsection shall not apply to so much of those assets as represents the excess.
- (5) In relation to the assets falling within either paragraph of subsection (3) above the creditors mentioned in subsections (1) and (2) of section 246 of the Companies Act 1948 shall be only those who are creditors in respect of liabilities falling within that paragraph; and any general meetings of creditors summoned for the purposes of that

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section shall accordingly be separate general meetings of the creditors in respect of the liabilities falling within each paragraph.

- (6) Where under section 333(1) of the said Act of 1948 (defalcations of directors etc. disclosed in course of winding up) a court orders any money or property to be repaid or restored to a company or any sum to be contributed to its assets then, if and so far as the wrongful act which is the reason for the making of the order related to assets representing a fund or funds maintained by the company in respect of its long term business, the court shall include in the order a direction that the money, property or contribution shall be treated for the purposes of this Act as assets of that fund or those funds and this Act shall have effect accordingly.

#### **48 Continuation of long term business of insurance company in liquidation**

- (1) This section has effect in relation to the winding up of an insurance company to which this Part of this Act applies, being a company carrying on long term business.
- (2) The liquidator shall, unless the court otherwise orders, carry on the long term business of the company with a view to its being transferred as a going concern to another insurance company, whether an existing company or a company formed for that purpose; and, in carrying on that business as aforesaid, the liquidator may agree to the variation of any contracts of insurance in existence when the winding up order is made but shall not effect any new contracts of insurance.
- (3) If the liquidator is satisfied that the interests of the creditors in respect of liabilities of the company attributable to its long term business require the appointment of a special manager of the company's long term business, he may apply to the court, and the court may on such application appoint a special manager of that business to act during such time as the court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the court.
- (4) Subsections (2) and (3) of section 263 of the Companies Act 1948 (special manager to give security and receive remuneration) shall apply to a special manager appointed under subsection (3) above as they apply to a special manager appointed under that section.
- (5) The court may, if it thinks fit and subject to such conditions (if any) as it may determine, reduce the amount of the contracts made by the company in the course of carrying on its long term business.
- (6) The court may, on the application of the liquidator, a special manager appointed under subsection (3) above or the Secretary of State, appoint an independent actuary to investigate the long term business of the company and to report to the liquidator, the special manager or the Secretary of State, as the case may be, on the desirability or otherwise of that business being continued and on any reduction in the contracts made in the course of carrying on that business that may be necessary for its successful continuation.
- (7) Notwithstanding section 245(1) of the said Act of 1948 (which requires a liquidator to obtain the sanction of the court or committee of inspection for the bringing of legal proceedings in the name of and on behalf of the company) the liquidator may without any such sanction make an application in the name of and on behalf of the company under section 42 above.
- (8) In this section " the court" means the court having jurisdiction to wind up the company.

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## **49 Subsidiary companies**

- (1) Where the insurance business or any part of the insurance business of an insurance company has been transferred to an insurance company to which this Part of this Act applies under an arrangement in pursuance of which the first-mentioned company (in this section called the subsidiary company) or the creditors thereof has or have claims against the company to which the transfer was made (in this section called the principal company), then, if the principal company is being wound up by or under the supervision of the court, the court shall, subject to the provisions of this section, order the subsidiary company to be wound up in conjunction with the principal company, and may by the same or any subsequent order appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the court necessary, with a view to the companies being wound up as if they were one company.
- (2) The commencement of the winding up of the principal company shall, save as otherwise ordered by the court, be the commencement of the winding up of the subsidiary company.
- (3) In adjusting the rights and liabilities of the members of the several companies between themselves, the court shall have regard to the constitution of the companies, and to the arrangements entered into between the companies, in the same manner as the court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.
- (4) Where any company alleged to be subsidiary is not in process of being wound up at the same time as the principal company to which it is subsidiary, the court shall not direct the subsidiary company to be wound up unless, after hearing all objections (if any) that may be urged by or on behalf of the company against its being wound up, the court is of opinion that the company is subsidiary to the principal company, and that the winding up of the company in conjunction with the principal company is just and equitable.
- (5) An application may be made in relation to the winding up of any subsidiary company in conjunction with a principal company by any creditor of, or person interested in, the principal or subsidiary company.
- (6) Where a company stands in the relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section.

## **50 Reduction of contracts as alternative to winding up**

In the case of an insurance company which has been proved to be unable to pay its debts, the court may, if it thinks fit, reduce the amount of the contracts of the company on such terms and subject to such conditions as the court thinks just, in place of making a winding up order.

## **51 Winding up rules**

- (1) Rules may be made under section 365 of the Companies Act 1948 (general rules about winding up) for determining the amount of the liabilities of an insurance company to

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policy holders of any class or description for the purpose of proof in a winding up and generally for carrying into effect the provisions of this Part of this Act with respect to the winding up of insurance companies.

- (2) Without prejudice to the generality of subsection (1) above, rules under the said section 365 may make provision for all or any of the following matters—
- (a) the identification of the assets and liabilities falling within either paragraph of subsection (3) of section 47 above;
  - (b) the apportionment between the assets falling within paragraphs (a) and (b) of that subsection of the costs, charges and expenses of the winding up and of any debts of the company having priority under section 319 of the said Act of 1948;
  - (c) the determination of the amount of liabilities of any description falling within either paragraph of that subsection for the purpose of establishing whether or not there is any such excess in respect of that paragraph as is mentioned in subsection (4) of section 47 above;
  - (d) the application of assets within paragraph (a) of the said subsection (3) for meeting the liabilities within that paragraph;
  - (e) the application of assets representing any such excess as is mentioned in the said subsection (4).