



# Insurance Companies Act 1974

## 1974 CHAPTER 49

### PART II

#### REGULATION OF INSURANCE COMPANIES

##### *Transfers of long term business*

#### **42 Sanction of court for transfer of long term business**

- (1) Where it is proposed to carry out a scheme under which the whole or part of the long term business carried on by an insurance company to which this Part of this Act applies (" the transferor company ") is to be transferred to another body whether incorporated or not (" the transferee company ") the transferor company or transferee company may apply to the court, by petition, for an order sanctioning the scheme.
- (2) The court shall not entertain an application under this section unless the petition is accompanied by a report on the terms of the scheme by an independent actuary and the court is satisfied that the requirements of subsection (3) below have been complied with.
- (3) The said requirements are—
  - (a) that a notice has been published in the London and Edinburgh Gazettes and, except where the court has otherwise directed, in two national newspapers stating that the application is to be made and giving the address of the offices at which, and the period for which, copies of the documents mentioned in paragraph (d) below will be available as required by that paragraph;
  - (b) except where the court has otherwise directed, that a statement—
    - (i) setting out the terms of the scheme ; and
    - (ii) containing a summary of the report mentioned in subsection (2) above sufficient to indicate the opinion of the actuary on the likely effects of the scheme on the long term policy holders of the companies concerned,

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- has been sent to each of those policy holders and to every member of those companies;
- (c) that a copy of the petition, of the report mentioned in subsection (2) above and of any statement sent out under paragraph (b) above has been served on the Secretary of State and that a period of not less than twenty-one days has elapsed since the date of service;
  - (d) that copies of the petition and of the report mentioned in subsection (2) above have been open to inspection at offices in Great Britain of the companies concerned for a period of not less than twenty-one days beginning with the date on which the notice mentioned in paragraph (a) above was published as required by that paragraph.
- (4) Each of the companies concerned shall, on payment of such fee as may be prescribed by rules of court, furnish a copy of the petition and of the report mentioned in subsection (2) above to any person who asks for one at any time before an order sanctioning the scheme is made on the petition.
- (5) On any petition under this section—
- (a) the Secretary of State, and
  - (b) any person (including any employee of the transferor company or the transferee company) who alleges that he would be adversely affected by the carrying out of the scheme,
- shall be entitled to be heard.
- (6) The court shall not make an order sanctioning the scheme unless it is satisfied that the transferee company is, or immediately after the making of the order will be, authorised under section 3 above to carry on long term business of the class or classes to be transferred under the scheme.
- (7) No such transfer as is mentioned in subsection (1) above shall be carried out unless the scheme relating to the transfer has been sanctioned by the court in accordance with this section; and no order shall be made under section 206 or 208 of the Companies Act 1948 (compromises and arrangements between a company and its creditors or members) in respect of so much of any compromise or arrangement as involves any such transfer.
- (8) In this section "the court" means the High Court of Justice in England except that it means—
- (a) the Court of Session if the transferor company and the transferee company are registered or have their head offices in Scotland ; and
  - (b) either the High Court of Justice in England or the Court of Session if one only of those companies is registered or has its head office in Scotland.
- (9) This section does not apply to any scheme if the transferor company and transferee company are registered or have their head offices in Northern Ireland; and subsection (7) above does not apply if either of those companies is registered or has its head office in Northern Ireland and the scheme has been sanctioned by the High Court of Justice in Northern Ireland.
- (10) Subsection (7) above does not apply to a transfer of long term business carried on elsewhere than in Great Britain but, save as aforesaid, this section applies whether or not the long term business is carried on in Great Britain and whether or not the scheme involves the transfer of any other part of the transferor company's undertaking or the amalgamation of that company with one or more other companies.

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### **43 Provisions supplementary to s. 42**

- (1) Where the court makes an order under section 42 above sanctioning a scheme the court may, either by that order or by any subsequent order, make provision for all or any of the following matters—
  - (a) the transfer to the transferee company of the whole or any part of the undertaking and of the property or liabilities of the transferor company;
  - (b) the allotting or appropriation by the transferee company of any shares, debentures, policies or other like interests in that company which under the scheme are to be allotted or appropriated by that company to or for any person ;
  - (c) the continuation by or against the transferee company of any legal proceedings pending by or against the transferor company;
  - (d) the dissolution, without winding up, of the transferor company;
  - (e) such incidental, consequential and supplementary matters as are necessary to secure that the scheme shall be fully and effectively carried out.
- (2) Where any such order provides for the transfer of property or liabilities, that property shall, by virtue of the order, be transferred to and vest in, and those liabilities shall, by virtue of the order, be transferred to and become the liabilities of, the transferee company, and in the case of any property, if the order so directs, freed from any mortgage or charge which is by virtue of the scheme to cease to have effect.
- (3) For the purposes of any provision requiring the delivery of an instrument of transfer as a condition for the registration of a transfer of any property (including in particular section 75 of the Companies Act 1948 and section 56(4) of the Finance Act 1946) an order which by virtue of this section operates to transfer any property shall be treated as an instrument of transfer.
- (4) Where a scheme is sanctioned by an order of the court under section 42 above the transferee company shall, within ten days from the date on which the order is made or such longer period as the Secretary of State may allow, deposit two office copies of the order with the Secretary of State.
- (5) In this section " property " includes property, rights and powers of every description, " liabilities " includes duties and "shares " and " debentures " have the same meaning as in the Companies Act 1948.