



# Insurance Companies Act 1981

## 1981 CHAPTER 31

### PART I

#### RESTRICTION ON CARRYING ON INSURANCE BUSINESS

##### *Preliminary*

#### **1 Classification**

- (1) For the purposes of this Act and of the Insurance Companies Act 1974 (" the 1974 Act") insurance business is divided into long term business and general business; and—
  - " long term business" means insurance business of any of the classes specified in Schedule 1 to this Act, and
  - " general business " means insurance business of any of the classes specified in Part I of Schedule 2 to this Act.
- (2) For the purposes of this Act and the 1974 Act the effecting and carrying out of a contract whose principal object is within one class of insurance business, but which contains related and subsidiary provisions within another class or classes, shall be taken to constitute the carrying on of insurance business of the first-mentioned class, and no other, if subsection (3) or (4) below applies to the contract.
- (3) This subsection applies to a contract whose principal object is within any class of long term business but which contains subsidiary provisions within general business class 1 or 2 if the insurer is authorised under section 3 or 4 below to carry on long term business class I.
- (4) This subsection applies to a contract whose principal object is within one of the classes of general business but which contains subsidiary provisions within another of those classes, not being class 14 or 15.

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## **2 Restriction on carrying on insurance business**

- (1) Subject to the following provisions of this section, no person shall carry on any insurance business in the United Kingdom unless authorised to do so under section 3 or 4 below.
- (2) Subsection (1) above shall not apply to insurance business (other than industrial assurance business) carried on—
  - (a) by a member of Lloyd's; or
  - (b) by a body registered under the enactments relating to friendly societies; or
  - (c) by a trade union or employers' association 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.

In this subsection "trade union" and "employers' association" have (throughout the United Kingdom) the meanings assigned to them by section 28 of the Trade Union and Labour Relations Act 1974.

- (3) Subsection (1) above shall not apply to industrial assurance business carried on by a friendly society registered under the enactments relating to such societies.
- (4) Subsection (1) above shall not apply to general business of class 14, 15, 16 or 17 if it is carried on solely in the course of carrying on, and for the purposes of, banking business.
- (5) Subsection (1) above shall not apply to general business consisting in the effecting and carrying out, by an insurance company that carries on no other insurance business, of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.

### *Authorised insurance companies*

## **3 Authorisation by Secretary of State**

- (1) The Secretary of State may authorise a body to carry on in the United Kingdom such of the classes of insurance business specified in Schedule 1 or 2 to this Act, or such parts of those classes, as may be specified in the authorisation.
- (2) An authorisation under this section may be restricted to industrial assurance business or to reinsurance business; and a body may not carry on industrial assurance business by virtue of an authorisation under this section unless the authorisation expressly extends to such business.
- (3) An authorisation under this section may identify classes or parts of classes of general business by referring to the appropriate groups specified in Part II of Schedule 2 to this Act.
- (4) On the issue to a body of an authorisation under this section, any previous authorisation of that body under this section or section 4 below shall lapse.

## **4 Existing insurance companies**

- (1) A body that was, immediately before the commencement of this section, authorised under section 3 of the 1974 Act to carry on in the United Kingdom insurance business

of a class relevant for the purposes of that Act (or of any part of such a class) shall be authorised to carry on there insurance business of the corresponding class specified in Schedule 1 or 2 to this Act (or of the appropriate part of that class).

- (2) For the purposes of subsection (1) above, each of the two classes of long term business relevant for the purposes of the 1974 Act shall be taken to correspond with classes I, II, III, IV, VI, and VII in Schedule 1 to this Act; and a class of general business relevant for the purposes of the 1974 Act shall be taken to correspond with the class identified in Part I of Schedule 2 to this Act by the same number.
- (3) A body may not carry on industrial assurance business by virtue of this section unless it was carrying on such business immediately before the commencement of this Act.

#### *Applications for authorisation*

### **5 Submission of proposals etc.**

- (1) The Secretary of State shall not issue an authorisation under section 3 above unless—
  - (a) the applicant has submitted to him such proposals as to the manner in which it proposes to carry on business, such financial forecasts and such other information as may be required by or in accordance with regulations under the 1974 Act, and
  - (b) he is satisfied on the basis of that and any other information received by him that the application ought to be granted.
- (2) The Secretary of State shall decide an application for an authorisation under section 3 above within six months of receiving the information referred to in subsection (1) (a) above; and if he refuses to issue the authorisation he shall inform the applicant in writing of the reasons for the refusal.

### **6 Combination of long term and general business**

The Secretary of State shall not under section 3 above authorise a body to carry on both long term business and general business unless—

- (a) the long term business is restricted to reinsurance, or
- (b) the body is at the time the authorisation is issued already lawfully carrying on in the United Kingdom both long term business and general business (in neither case restricted to reinsurance).

### **7 United Kingdom applicants**

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom unless the applicant is—
  - (a) a company as defined in section 455 of the Companies Act 1948 or section 399 of the Companies Act (Northern Ireland) 1960, or
  - (b) a registered society, or
  - (c) a body corporate established by royal charter or Act of Parliament and already authorised under section 3 or 4 above to carry on insurance business (though not to the extent proposed in the application).
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it has an issued share capital

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any part of which was issued after the commencement of this section but is not fully paid up.

- (3) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in the United Kingdom if it appears to the Secretary of State that any director, controller, manager or main agent of the applicant is not a fit and proper person to hold the position held by him.
- (4) In this section " controller ", in relation to the applicant, means—
- (a) a managing director of the applicant or of a body corporate of which the applicant is a subsidiary;
  - (b) a chief executive of the applicant or of a body corporate, being an insurance company, of which the applicant is a subsidiary;
  - (c) a person—
    - (i) in accordance with whose directions or instructions the directors of the applicant or of a body corporate of which it is a subsidiary 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 applicant or of a body corporate of which it is a subsidiary.
- (5) In this section " manager ", in relation to the applicant, means an employee of the applicant (other than a chief executive) who, under the immediate authority of a director or chief executive of the applicant—
- (a) exercises managerial functions, or
  - (b) is responsible for maintaining accounts or other records of the applicant,
- not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom.
- (6) In this section " main agent", in relation to the applicant, means, subject to such exceptions as may be prescribed by regulations under the 1974 Act, a person appointed by the applicant to be its agent in respect of general business in the United Kingdom, with authority to enter into contracts on behalf of the applicant in any financial year—
- (a) without limit on the aggregate amount of premiums ; or
  - (b) with a limit in excess of 10 per cent, of the premium limit as determined in accordance with Schedule 3 to this Act.
- (7) In this section " chief executive ", in relation to the applicant or a body corporate of which it is a subsidiary, means an employee of the applicant or that body corporate, who, either alone or jointly with others, is responsible under the immediate authority of the directors for the conduct of the whole of the insurance business of the applicant or that body corporate.
- (8) 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 ;

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and for the purposes of this subsection " son " includes step-son, " daughter " includes step-daughter and " minor ", in relation to Scotland, includes pupil.

## **8 Applicants from other member States**

- (1) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in a member State other than the United Kingdom unless the applicant has a representative fulfilling the requirements of section 10 below.
- (2) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is in a member State other than the United Kingdom if it appears to the Secretary of State that any relevant executive or main agent of the applicant is not a fit and proper person to hold the position held by him.
- (3) Where an applicant whose head office is in a member State other than the United Kingdom seeks an authorisation under section 3 above restricted to reinsurance business—
  - (a) the Secretary of State shall not issue the authorisation unless he is satisfied that the applicant is a body corporate entitled under the law of that State to carry on insurance business there ; and .
  - (b) subsection (2) above shall have effect as if the reference to any relevant executive were a reference to any person who is a director, controller or manager of the applicant or a person within paragraph (a) or (b) of subsection (4) below.
- (4) In this section " relevant executive" in relation to the applicant means a person who is—
  - (a) the representative referred to in subsection (1) above or the individual representative referred to in section 10(5) below;
  - (b) an officer or employee of the applicant who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
    - (i) is also responsible for the conduct of insurance business carried on by the applicant elsewhere, and
    - (ii) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom ; or
  - (c) an employee of the applicant who, under the immediate authority of a director or of an officer or employee within paragraph (b) above.—
    - (i) exercises managerial functions, or
    - (ii) is responsible for maintaining accounts or other records of the applicant,not being a person whose functions relate exclusively to business conducted from a place of business outside the United Kingdom;and "controller", "manager" and "main agent" have the same meanings as in section 7 above.

## **9 Applicants from outside the Community**

- (1) The Secretary of State shall not issue an authorisation under section 3 above in respect of long term or general business to an applicant whose head office is not in a member State unless he is satisfied—

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- (a) that the applicant is a body corporate entitled under the law of the place where its head office is situated to carry on long term or, as the case may be, general business there;
  - (b) that the applicant has in the United Kingdom assets of such value as may be prescribed ; and
  - (c) that the applicant has made a deposit of such amount and with such person as may be prescribed ;but subject to subsections (2) and (3) below.
- (2) Where the applicant seeks to carry on insurance business in the United Kingdom and one or more other member States, the Secretary of State and the supervisory authority in the other State or States concerned may agree that this subsection shall apply to the applicant; and in that event—
  - (a) paragraph (b) of subsection (1) above shall have effect as if the reference to the United Kingdom were a reference to the member States concerned taken together ; and
  - (b) paragraph (c) of that subsection shall have effect as if the reference to such person as may be prescribed were a reference to such person as may be agreed between the Secretary of State and the other supervisory authority or authorities concerned.
- (3) Paragraph (c) of subsection (1) above shall not apply where the authorisation sought is one restricted to reinsurance.
- (4) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is not in a member State unless the applicant has a representative fulfilling the requirements of section 10 below.
- (5) The Secretary of State shall not issue an authorisation under section 3 above to an applicant whose head office is not in a member State if it appears to the Secretary of State that—
  - (a) the representative of the applicant referred to in subsection (4) above or the individual representative referred to in section 10(5) below, or
  - (b) any director, controller or manager of the applicant, or
  - (c) a main agent of the applicant,is not a fit and proper person to hold the position held by him.
- (6) In this section "controller", "manager" and "main agent" have the same meanings as in section 7 above, except that for the purposes of this section the controllers of the applicant shall be taken to include any officer or employee who, either alone or jointly with others, is responsible for the conduct of the whole of the insurance business carried on by the applicant in the United Kingdom, not being a person who—
  - (a) is also responsible for the conduct of insurance business carried on by it elsewhere ; and
  - (b) has a subordinate who is responsible for the whole of the insurance business carried on by the applicant in the United Kingdom.
- (7) Regulations under the 1974 Act may make such provision as to deposits under this section as appears to the Secretary of State to be necessary or expedient, including provision for the deposit of securities instead of money, and, in relation to deposits with the Accountant General of the Supreme Court, provision applying (with or without modification) any of the provisions of the rules for the time being in force under section 7 of the Administration of Justice Act 1965.

## **10 General representatives**

- (1) The requirements referred to in sections 8(1) and 9(4) above are those set out in the following provisions of this section.
- (2) The representative must be a person resident in the United Kingdom who has been designated as the applicant's representative for the purposes of this section.
- (3) The representative must be authorised to act generally, and to accept service of any document, on behalf of the applicant.
- (4) The representative must not be an auditor, or a partner or employee of an auditor, of the accounts of any business carried on by the applicant.
- (5) If the representative is not an individual, it must be a company as defined in section 455 of the Companies Act 1948 or section 399 of the Companies Act (Northern Ireland) 1960 with its head office in the United Kingdom and must itself have an individual representative resident in the United Kingdom who is authorised to act generally, and to accept service of any document, on behalf of the company in its capacity as representative of the applicant.

### *Withdrawal of authorisation*

## **11 Withdrawal of authorisation in respect of new business**

- (1) The Secretary of State may, at the request of the company or on any grounds set out in subsection (2) below, direct that an insurance company authorised under section 3 or 4 above to carry on insurance business shall cease to be authorised to effect contracts of insurance, or contracts of any description specified in the direction.
- (2) The grounds referred to in subsection (1) above are—
  - (a) that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of the 1974 Act or this Act;
  - (b) that there exists a ground on which he would be prohibited by section 7, 8 or 9 above from issuing an authorisation to the company;
  - (c) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in a member State where it has its head office or where it has in accordance with section 9(2) above made a deposit.
- (3) After giving a direction under this section otherwise than at the request of the company concerned the Secretary of State shall inform the company in writing of his reasons for giving the direction.
- (4) A direction under this section shall not prevent a company from effecting a contract of insurance in pursuance of a term of a subsisting contract of insurance.
- (5) Where a direction under this section has been given in respect of a company which has its head office, or has in accordance with section 9(2) above made a deposit, in a member State other than the United Kingdom, the Secretary of State may revoke or vary the direction if after consultation with the supervisory authority in that member State he considers it appropriate to do so.
- (6) Subject to subsection (5) above a direction given under this section in respect of any insurance company may not be revoked or varied; but if the Secretary of State subsequently issues to the company under section 3 above an authorisation to carry on

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insurance business of a class to which the direction relates, the direction shall cease to have effect in relation to such business.

## **12 Notices of withdrawal under section 11**

- (1) Before giving a direction under section 11 above otherwise than at the request of the company concerned the Secretary of State shall serve on the company a written notice stating—
  - (a) that he is considering giving a direction and the ground on which he is considering it; and
  - (b) that the company may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if the company so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (2) Before giving a direction under section 11 above in respect of a company on the ground that he would be prohibited by section 7(3), 8(2) or 9(5) from issuing an authorisation to the company, the Secretary of State shall serve on the person whose fitness is in question a written notice stating—
  - (a) that he is considering giving a direction on that ground ; and
  - (b) that the person on whom the notice is served may, within the period of one month from the date of service of the notice, make written representations to the Secretary of State and, if that person so requests, oral representations to an officer of the Department of Trade appointed for the purpose by the Secretary of State.
- (3) Subject to subsection (4) below, the Secretary of State shall consider any representations made in response to a notice under subsection (2) above before serving a notice under subsection (1) above.
- (4) Subsection (3) above shall not apply where the position held by the person on whom the notice under subsection (2) above is served, and whose fitness for that position is in question, is controller of a company.
- (5) A notice under subsection (1) or (2) above shall give particulars of the ground on which the Secretary of State is considering giving a direction.
- (6) Where representations are made in response to a notice under subsection (1) or (2) above, the Secretary of State shall take them into consideration before giving a direction.
- (7) Any notice to be served on a person under subsection (1) or (2) above may be served by post, and a letter containing the notice shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in the United Kingdom.
- (8) After giving a direction under section 11 above the Secretary of State shall publish notice of it in the London, Edinburgh and Belfast Gazettes and in such other ways as appear to him expedient for notifying the public.

## **13 Final withdrawal of authorisation**

- (1) Where an insurance company ceases to carry on in the United Kingdom any insurance business, or insurance business of any class, the Secretary of State may direct that it



shall cease to be authorised under section 3 or 4 above to carry on insurance business, or insurance business of that class.

- (2) If a body authorised under section 3 above to carry on insurance business of any class has not at any time carried on business of that class, and at least twelve months have elapsed since the issue of the authorisation, the Secretary of State may direct that it shall cease to be authorised to carry on 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 a class to which the direction relates.

### *Offences*

#### **14 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—
  - (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—
    - (i) in England and Wales and Northern Ireland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 32 of the Magistrates' Courts Act 1980 ;
    - (ii) in Scotland, to a fine not exceeding £1,000 or, if it is greater, the prescribed sum within the meaning of section 289B of the Criminal Procedure (Scotland) Act 1975;

and for the purposes of the application of this subsection in Northern Ireland, the provisions of the Magistrates' Courts Act 1980 which relate to the sum mentioned in paragraph (b)(i) above shall extend to Northern Ireland.

## **PART II**

### **REGULATION OF INSURANCE COMPANIES**

#### *Preliminary*

#### **15 Restriction of business to insurance**

- (1) An insurance company to which Part II of the 1974 Act applies shall not carry on any activities, in the United Kingdom or elsewhere, otherwise than in connection with or for the purposes of its insurance business.
- (2) For the purposes of subsection (1) above any activities of an insurance company that are excluded from the definition of insurance business by section 34(c)(ii) below shall be treated as carried on in connection with its insurance business.

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## **16 Exclusion of certain companies providing benefits in kind**

Part II of the 1974 Act shall not apply to an insurance company whose insurance business is restricted to general business consisting in the effecting and carrying out of contracts of such descriptions as may be prescribed, being contracts under which the benefits provided by the insurer are exclusively or primarily benefits in kind.

### *Accounts and statements*

## **17 Actuarial investigation of long term business**

- (1) Section 14 of the 1974 Act shall be amended as follows.
- (2) In subsection (1)(a) (which requires an actuarial investigation of a company's long term business at least once in every three years) for the words from " three years " to " byelaws " there shall be substituted the words " period of twelve months " , and the words from " including " to " thereof " shall be omitted.
- (3) After subsection (1) there shall be inserted—
  - “(1A) An investigation to which subsection (1)(b) above relates shall include—
    - (a) a valuation of the liabilities of the company attributable to its long term business ; and
    - (b) a determination of any excess over those liabilities of the assets representing the fund or funds maintained by the company in respect of that business and, where any rights of any long term policy holders to participate in profits relate to particular parts of such a fund, a determination of any excess of assets over liabilities in respect of each of those parts.”.
- (4) For subsection (2) there shall be substituted—
  - “(2) At least once in every period of five years an insurance company to which subsection (1) above applies shall prepare a statement of its long term business at the date to which the accounts of the company are made up for the purposes of an investigation in pursuance of paragraph (a) of that subsection.”.

## **18 Accounts and records**

- (1) In section 18(3) of the 1974 Act (signature of documents deposited with Secretary of State) for paragraphs (a) and (b) there shall be substituted the words " by such persons as may be prescribed " .
- (2) After section 22 of the 1974 Act there shall be inserted—

### **“22A Companies from outside the Community.**

An insurance company to which this Part of this Act applies whose head office is not in a member State shall keep in the United Kingdom proper accounts and records in respect of insurance business carried on in the United Kingdom.”.

*Assets and liabilities of long term business*

**19 Application of assets**

- (1) In subsection (1) of section 24 of the 1974 Act (assets of long term business to be applied only for purposes of that business) after the words " long term business " there shall be inserted " (a) " , and at the end there shall be added the words "and
- (b) shall not be transferred so as to be available for other purposes of the company except where the transfer constitutes reimbursement of expenditure borne by other assets (in the same or the last preceding financial year) in discharging liabilities wholly or partly attributable to long term business.”.
- (2) After subsection (2) of that section (which authorises the distribution of surpluses of assets over liabilities) there shall be inserted—
- “(2A) Subsection (2) above shall not authorise a transfer or other application of assets by reference to an actuarial investigation at any time after the date when the abstract of the actuary’s report of the investigation has been deposited with the Secretary of State in accordance with section 18(1) above or section 34(4) below.”.

**20 Allocations to policy holders**

- (1) Section 25 of the 1974 Act shall be amended as follows.
- (2) For subsections (1) and (2) there shall be substituted—
- “(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 category are eligible to participate, and
- (b) an amount has been allocated to policy holders of that category in respect of a previously established surplus in which policy holders of that category were eligible to participate,
- the company shall not by virtue of section 24(2) above transfer or otherwise apply assets representing any part of the surplus mentioned in paragraph (a) above unless the company has either allocated to policy holders of that category in respect of that surplus an amount not less than the relevant minimum, or complied with the requirements of subsection (3) below and made to those policy holders any allocation of which notice is given under paragraph (a) of that subsection.
- (2) Subject to subsections (6) and (7) below, the relevant minimum is the amount represented by the formula
- $$\frac{b \times c}{a} - \frac{c}{200}$$
- where—
- a is the last previously established surplus in respect of which an amount was allocated to policy holders of the category in question ;
- b is the amount so allocated ; and
- c is the surplus referred to in subsection (1)(a).”.

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- (3) In subsection (3)(a) after the words " to make " there shall be inserted the words " no allocation or ".
- (4) In subsection (6)—
- (a) for the words " that surplus " there shall be substituted the words " the next established surplus in respect of which an amount is allocated to eligible policy holders generally "; and
  - (b) after the words " any surplus " there shall be added the words " in respect of which such an allocation is made "; and
  - (c) the words " made in anticipation of it" shall cease to have effect.
- (5) After subsection (7) there shall be added—
- “(8) For the purposes of subsection (1) above policy holders shall be taken to be eligible to participate in an established surplus in any case where they would be eligible to participate in a later established surplus representing it if it were carried forward unappropriated.”.

#### *Financial resources*

## 21 Financial resources

After section 26 of the 1974 Act there shall be inserted—

### “26A Margins of solvency.

- (1) Every insurance company to which this Part of this Act applies—
  - (a) whose head office is in the United Kingdom, or
  - (b) whose business in the United Kingdom is restricted to reinsurance,
 shall maintain a margin of solvency of such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (2) Subject to subsection (3) below, every insurance company to which this Part of this Act applies whose head office is not in a member State shall maintain—
  - (a) a margin of solvency, and
  - (b) a United Kingdom margin of solvency,
 of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.
- (3) Subsection (2) above shall not apply to an insurance company if its business in the United Kingdom is restricted to reinsurance or if section 9(2) of the Insurance Companies Act 1981 applies to it; but an insurance company that has made a deposit in the United Kingdom in accordance with section 9(2)(6) of that Act shall maintain—
  - (a) a margin of solvency, and
  - (b) a Community margin of solvency,
 of such amounts as may be prescribed by or determined in accordance with regulations made for the purposes of this section.

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- (4) An insurance company that fails to comply with subsection (1), (2) or (3) above—
- (a) shall at the request of the Secretary of State submit to him a plan for the restoration of a sound financial position ;
  - (b) shall propose modifications to the plan (or the plan as previously modified) if the Secretary of State considers it inadequate;
  - (c) shall give effect to any plan accepted by the Secretary of State as adequate.
- (5) For the purposes of this Act—
- (a) the margin of solvency of an insurance company is the excess of the value of its assets over the amount of its liabilities, that value and amount being determined in accordance with any applicable valuation regulations ;
  - (b) the United Kingdom margin of solvency of an insurance company is its margin of solvency computed by reference to the assets and liabilities of the business carried on by the company in the United Kingdom;
  - (c) the Community margin of solvency of an insurance company is its margin of solvency computed by reference to the assets and liabilities of the business carried on by the company in member States (taken together).
- (6) In the case of an insurance company that carries on both long term and general business, subsections (1), (2) and (3) above shall have effect as if—
- (a) the requirements to maintain a margin of solvency, and
  - (b) where the company carries on both kinds of business in the United Kingdom, the requirement to maintain a United Kingdom margin of solvency, and
  - (c) where the company carries on both kinds of business in member States (taken together), the requirement to maintain a Community margin of solvency,

were requirements to maintain separate margins in respect of the two kinds of business (and accordingly as if the references in subsection (5) to assets and liabilities were references to assets and liabilities relating to the kind of business in question).

## **26B Failure to maintain minimum margin.**

- (1) If—
- (a) the margin of solvency of an insurance company to which section 26A(1) above applies, or
  - (b) the margin of solvency or United Kingdom margin of solvency of an insurance company to which section 26A(2) above applies, or
  - (c) the margin of solvency of Community margin of solvency of an insurance company to which section 26A(3) above applies,
- falls below such amount as may be prescribed by or determined in accordance with regulations made for the purposes of this section, the company shall at the request of the Secretary of State submit to him a short-term financial scheme.

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- (2) An insurance company that has submitted a scheme to the Secretary of State under subsection (1) above shall propose modifications to the scheme (or the scheme as previously modified) if the Secretary of State considers it inadequate, and shall give effect to any scheme accepted by him as adequate.
- (3) Where a company is required by virtue of section 26A(6) above to maintain separate margins in respect of long term and general business, subsection (1) above shall have effect as if any reference to the margin of solvency, the United Kingdom margin of solvency or the Community margin of solvency of the company were a reference to the margin in respect of either of the two kinds of business.

### **26C Companies supervised in other member States.**

- (1) An insurance company to which this Part of this Act applies—
  - (a) whose head office is in a member State other than the United Kingdom, or
  - (b) which has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit in such a member State,
 shall secure that the value of the assets of the business carried on by it in the United Kingdom does not fall below the amount of the liabilities of that business, that value and amount being determined in accordance with any applicable valuation regulations.
- (2) In the case of a company that carries on in the United Kingdom both long term and general business subsection (1) above shall have effect separately in relation to the assets and liabilities of the two kinds of business.

### **26D Form and situation of assets.**

- (1) Regulations may make provision for securing that, in such circumstances and to such extent as may be prescribed, the assets of an insurance company to which this Part of this Act applies shall be maintained in such places as may be prescribed and the nature of the assets shall be appropriate in relation to the currency in which the liabilities of the company are or may be required to be met.
- (2) Regulations made for the purposes specified in subsection (1) above shall not have effect in relation to the assets of an insurance company whose head office is in a member State so far as their value exceeds the amount of the liabilities of the business carried on by the company in the United Kingdom, that value and amount being determined in accordance with any applicable valuation regulations.”.

### *Intervention by Secretary of State*

## **22 Grounds for intervention**

- (1) Notwithstanding anything in section 28 of the 1974 Act (grounds for intervention), the powers conferred on the Secretary of State by sections 31 and 32 of that Act shall not be exercisable in relation to an insurance company except—

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- (a) where the Secretary of State has given (and not revoked) a direction in respect of the company under section 11 above; or
  - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of section 26B, 26C or 26D of the 1974 Act; or
  - (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.
- (2) In section 28 of the 1974 Act
- (a) in paragraph (b)(i) of subsection (1), at the end, there shall be added the words " or the Insurance Companies Act 1981 ";
  - (b) in paragraph (c) of that subsection, at the end, there shall be added the words " or any provision of the Insurance Companies Act 1981 ";
  - (c) in paragraph (e) of that subsection for the words " section 7 above " there shall be substituted the words " section 7, 8 or 9 of the Insurance Companies Act 1981 "; and
  - (d) after that paragraph there shall be added—
    - “(f) that it appears to him that there has been a substantial departure from any proposal or forecast submitted to him by the company in accordance with section 5 of the Insurance Companies Act 1981 ;
    - (g) that the company has ceased to be authorised to effect contracts of insurance, or contracts of a particular description, in a member State where it has its head office or has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit”;
  - (e) subsection (2) shall cease to have effect.

## **23 Powers of intervention**

- (1) Section 29 of the 1974 Act (restrictions on new business) shall cease to have effect.
- (2) At the end of section 30 of the 1974 Act (requirements about investments) there shall be added—
  - “(3) A requirement under this section shall not apply to the assets of a company so far as their value exceeds—
    - (a) in the case of a company whose head office is in a member State other than the United Kingdom, or which has in accordance with section 9(2) of the Insurance Companies Act 1981 made a deposit in such a member State, the amount of the liabilities of the business carried on by the company in the United Kingdom ;
    - (b) in any other case, the amount of the liabilities of the company; that value and amount being determined in accordance with any applicable valuation regulations.”.

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- (3) In subsection (5) of section 31 of the 1974 Act (maintenance of assets in the United Kingdom) for the words from " arising " to the end there shall be substituted the words " of the business carried on by the company in the United Kingdom ".
- (4) At the end of section 37 of the 1974 Act (residual power) there shall be added—
- “(2) The power conferred by this section shall not be exercised in such a way as to restrict the company's freedom to dispose of its assets except where it is exercised—
- (a) after the Secretary of State has given a direction under section 11 of the Insurance Companies Act 1981; or
  - (b) on the ground that it appears to the Secretary of State that the company has failed to satisfy an obligation to which it is subject by virtue of section 26B, 26C or 26D above ; or
  - (c) where the ground for intervention arises out of the submission by the company to the Secretary of State of an account or statement specifying, as the amount of any liabilities of the company, an amount appearing to the Secretary of State to have been determined otherwise than in accordance with valuation regulations or, where no such regulations are applicable, generally accepted accounting concepts, bases and policies or other generally accepted methods appropriate for insurance companies.”.

## 24 Entry and search of premises

In section 110(1) of the Companies Act 1967 (search warrants in respect of documents whose production has been required under section 109 of that Act or section 36 of the 1974 Act) the words " or section 36 of the Insurance Companies Act 1974 " shall cease to have effect.

### *Transfers of business*

## 25 Approval of transfers of general business

- (1) Where it is proposed to execute an instrument by which an insurance company to which Part II of the 1974 Act applies (" the transferor ") is to transfer to another body (" the transferee") all its rights and obligations under such general policies, or general policies of such descriptions, as may be specified in the instrument, the transferor may apply to the Secretary of State for his approval of the transfer.
- (2) The Secretary of State shall not determine an application made under subsection (1) above unless he is satisfied that—
- (a) a notice approved by him for the purpose has been published in the London, Edinburgh and Belfast Gazettes and, if he thinks fit, in two national newspapers which have been so approved; and
  - (b) except in so far as he has otherwise directed, a copy of the notice has been sent to every affected policy holder and every other person who claims an interest in a policy included in the transfer and has given written notice of his claim to the transferor; and
  - (c) copies of a statement setting out particulars of the transfer and approved by him for the purpose have been available for inspection at one or more places



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in the United Kingdom for a period of not less than thirty days beginning with the date of the first publication of the notice in accordance with paragraph (a) above.

- (3) The notice referred to in subsection (2) above shall include a statement that written representations concerning the transfer may be sent to the Secretary of State before a specified day, which shall not be earlier than sixty days after the day of the first publication of the notice in accordance with paragraph (a) above; and the Secretary of State shall not determine the application until after considering any representations made to him before the specified day.
- (4) The Secretary of State shall not approve a transfer on an application under subsection (1) above unless he is satisfied that—
- (a) every policy included in the transfer evidences a contract which—
    - (i) was entered into before the date of the application ; and
    - (ii) imposes on the insurer obligations the performance of which will constitute the carrying on of insurance business in the United Kingdom; and
  - (b) the transferee is, or immediately after the approval will be, authorised under section 3 or 4 above to carry on in the United Kingdom insurance business of the appropriate class or classes ;
- and unless in his opinion the transferee's financial resources and the other circumstances of the case justify the giving of his approval.
- (5) On determining an application made under subsection (1) above, the Secretary of State shall—
- (a) publish a notice of his decision in the London, Edinburgh and Belfast Gazettes and in such other manner as he may think fit, and
  - (b) send a copy of that notice to the transferor, the transferee and every person who made representations in accordance with the notice referred to in subsection (2) above ;
- and if he refuses the application he shall inform the transferor and the transferee in writing of the reasons for his refusal.
- (6) Any notice or other document authorised or required to be given or served under this section or section 26 below may, without prejudice to any other method of service, be served by post; and a letter containing the notice or other document shall be deemed to be properly addressed if it is addressed to that person at his last known residence or last known place of business in the United Kingdom.
- (7) In this section " general policy " means a policy evidencing a contract the effecting of which constituted the carrying on of general business ; and for the purposes of this section a policy holder is an " affected policy holder " in relation to a proposed transfer if—
- (a) his policy is included in the transfer, or
  - (b) his policy is with the transferor and the Secretary of State has certified, after consulting the transferor, that in the opinion of the Secretary of State the policy holder's rights and obligations under the policy will or may be materially affected by the transfer.

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## **26 Effect of approval under section 25**

- (1) Subject to subsection (2) below, an instrument giving effect to a transfer approved by the Secretary of State under section 25 above shall be effectual in law—
  - (a) to transfer to the transferee all the transferor's rights and obligations under the policies included in the instrument, and
  - (b) if the instrument so provides, to secure the continuation by or against the transferee of any legal proceedings by or against the transferor which relate to those rights or obligations,
 notwithstanding the absence of any agreements or consents which would otherwise be necessary for it to be effectual in law for those purposes.
- (2) Except in so far as the Secretary of State may otherwise direct, a policy holder whose policy is included in such an instrument shall not be bound by it unless he has been given written notice of its execution by the transferor or the transferee.

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

- (1) Section 42 of the 1974 Act (sanction of court for transfer of long term business) shall be amended as follows.
- (2) In subsection (1) after the words " carried on " there shall be inserted the words " in the United Kingdom ".
- (3) In subsection (2) for the word " entertain " there shall be substituted the word " determine ".
- (4) In subsection (3)—
  - (a) in paragraph (a) for the words " is to be " there shall be substituted the words " has been ";
  - (b) in paragraph (d) for the words from " on which " to the end there shall be substituted the words " of the first publication of a notice in accordance with paragraph (a) above ".
- (5) In subsection (6) for the words " section 3 above " there shall be substituted the words " section 3 or 4 of the Insurance Companies Act 1981 ".
- (6) Subsection (10) shall cease to have effect.

*Change of manager, representative etc.*

## **28 Change of manager etc. of company from outside United Kingdom**

- (1) In relation to an insurance company whose head office is in a member State other than the United Kingdom, excluding a company whose business in the United Kingdom is restricted to reinsurance.—
  - (a) section 52 of the 1974 Act shall have effect as if the references to a managing director or chief executive were references to a principal United Kingdom executive ;
  - (b) section 53 of that Act shall not apply ;
  - (c) section 54 of that Act shall have effect as if references to a director or manager were references to a principal United Kingdom executive, an employee within section 8(4)(c) above or an authorised United Kingdom representative.

- (2) In relation to any other insurance company whose head office is outside the United Kingdom—
- (a) section 52 of the 1974 Act shall have effect as if the references to a chief executive included references to a principal United Kingdom executive ; and
  - (b) section 54 of that Act shall have effect as if the references to a director included references to a principal United Kingdom executive and to an authorised United Kingdom representative.
- (3) In this section—
- " principal United Kingdom executive " means an officer or employee within section 8(4)(6) or 9(6) above; and
  - " authorised United Kingdom representative" means a representative fulfilling the requirements of section 10 above or an individual representative of the kind described in subsection (5) of that section.

## **29 Change of main agent**

After section 54 of the 1974 Act there shall be inserted—

### **“54A Duty to notify change of main agent.**

- (1) An insurance company to which this Part of this Act applies shall give written notice to the Secretary of State of the fact that any person has become or ceased to be a main agent of the company and, if a main agent is a body corporate or a firm, of the fact that any person has become or ceased to be a director of the body or partner of the firm.
- (2) A notice under this section shall be given before the expiration of the period of fourteen days beginning with the day next following that on which the change comes to the knowledge of the insurance company.”.

## **PART III**

### **MISCELLANEOUS AND GENERAL**

## **30 Industrial assurance-apportionment**

In section 72(9) of the 1974 Act (special report by auditor on certain apportionments between industrial assurance business and other business) for the words from "expenses" to " apportioned " there shall be substituted the words " apportionment is made " and after the word " company " there shall be inserted the words " in respect of management expenses, income from investments, gains or losses on the disposal of investments, appreciation or depreciation in the value of investments, or taxation ".

## **31 Lloyd's underwriters-financial resources**

- (1) Subject to such modifications as may be prescribed by regulations under the 1974 Act, and to any determination made by the Secretary of State in accordance with such regulations, sections 26A, 26B and 26D of that Act shall apply to the members of

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Lloyd's taken together as they apply to an insurance company to which Part II of that Act applies and whose head office is in the United Kingdom.

- (2) The powers conferred on the Secretary of State by sections 30 to 33, 36 and 37 of the 1974 Act shall be exercisable in relation to the members of Lloyd's if there is a breach of an obligation imposed by virtue of subsection (1) above.

### **32 Lloyd's underwriters-transfers of business**

- (1) Sections 25 and 26 above and sections 42 and 43 of the 1974 Act shall apply in relation to transfers to and from members of Lloyd's if, and only if, the conditions specified in subsection (2) below are satisfied.
- (2) The conditions referred to in subsection (1) above are—
- (a) that the transfer is not one where both the transferor and the transferee are members of Lloyd's;
  - (b) that the Committee of Lloyd's have by resolution authorised one person to act in connection with the transfer for the members concerned as transferor or transferee ;
  - (c) that a copy of the resolution has been given to the Secretary of State.
- (3) Where sections 25 and 26 above or sections 42 and 43 of the 1974 Act apply in relation to a transfer to or from members of Lloyd's, they shall apply as if—
- (a) references to insurance companies to which Part II of the 1974 Act applies, or to persons authorised under section 3 or 4 of this Act, included references to members of Lloyd's; and
  - (b) anything done in connection with the transfer by the person authorised in accordance with subsection (2)(b) above had been done by the members for whom he acted.

### **33 Regulations**

- (1) In section 78 of the 1974 Act, at the end of subsection (3) there shall be added the words " and for the purposes of different enactments ".
- (2) In section 86 of the 1974 Act, after subsection (1) there shall be inserted—
- “(1A) Regulations under this Act may make different provision for cases of different descriptions.”

### **34 Insurance business**

For the purposes of this Act and the 1974 Act " insurance business " includes—

- (a) the effecting and carrying out, by a person not carrying on a banking business, of contracts for fidelity bonds, performance bonds, administration bonds, bail bonds or customs bonds or similar contracts of guarantee, being contracts effected by way of business (and not merely incidentally to some other business carried out by the person effecting them) in return for the payment of one or more premiums ;
- (b) the effecting and carrying out of tontines ;
- (c) the effecting and carrying out, by a body (not being a body carrying on a banking business) that carries on business which is insurance business apart from this paragraph, of—

- (i) capital redemption contracts;
- (ii) contracts to manage the investments of pension funds (other than funds solely for the benefit of its own officers or employees and their dependants or, in the case of a company, partly for the benefit of those persons and partly for the benefit of officers or employees and their dependants of its subsidiary or holding company or a subsidiary of its holding company);
- (d) the effecting and carrying out of contracts to pay annuities on human life.

### **35 Interpretation**

(1) In this Act—

" the 1974 Act" means the Insurance Companies Act 1974;

" holding company " shall be construed in accordance with section 154 of the Companies Act 1948 or section 148 of the Companies Act (Northern Ireland) 1960;

" supervisory authority ", in relation to a member State other than the United Kingdom, means the authority responsible in that State for supervising insurance companies;

" vessel " includes hovercraft.

- (2) Except where the context otherwise requires, expressions used in this Act and in the 1974 Act have the same meanings in this Act as in that Act.

### **36 Minor and consequential amendments and repeals**

- (1) Schedule 4 to this Act shall have effect.

- (2) The enactments mentioned in Part I of Schedule 5 to this Act (which include spent enactments) are hereby repealed to the extent specified in the third column of that Schedule and the instruments mentioned in Part II of that Schedule are hereby revoked.

### **37 Commencement**

- (1) This Act shall come into force on such day as the Secretary of State may appoint by order made by statutory instrument, and different days may be so appointed for different purposes.
- (2) An order under this section may contain such savings and transitional provisions as appear to the Secretary of State to be necessary or expedient.

### **38 Short title and extent**

- (1) This Act may be cited as the Insurance Companies Act 1981.
- (2) This Act extends to Northern Ireland.