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STATUTORY INSTRUMENTS

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**1993 No. 174**

**The Insurance Companies (Amendment) Regulations 1993**

amendments of the 1982 act

**Transfers of long term business**

- 3.—(1) Part II of the 1982 Act (regulation of insurance companies) is amended as follows.
- (2) After subsection (6) of section 49 (sanction of court for transfer of long term business) insert—
- “(6A) Without prejudice to the generality of subsection (6) above, where the head office of the transferee company is situated in a member State other than the United Kingdom the court shall not make an order sanctioning the scheme unless—
- (a) the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account; or
  - (b) every policy included in the proposed scheme evidences a contract of reinsurance.
- (6B) Notwithstanding the provisions of subsection (6) above, where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court may make an order sanctioning the scheme if it is satisfied that—
- (a) the transfer relates to commitments situated in the United Kingdom;
  - (b) the transferee company is entitled in accordance with section 81B below to provide insurance in the United Kingdom in respect of those commitments through that establishment; and
  - (c) the supervisory authorities of the member State in which the establishment is situated agree to the transfer.”

(3) After section 49 (sanction of court for transfer of long term business) insert—

**“Modifications of section 49 in certain cases.**

- 49A.—**(1) This section applies where—
- (a) it is proposed to carry out a scheme under which the whole or part of any long term business (other than reinsurance) carried on in the United Kingdom by an insurance company to which this Part of this Act applies (“the transferor company”) is to be transferred to another insurance company (“the transferee company”);
  - (b) all of the policies comprised in the business proposed to be transferred were written in the course of the provision of services in a member State other than the United Kingdom; and
  - (c) the head office of the transferee company is situated in a member State.
- (2) In any case where this section applies, section 49 above shall have effect as if—
- (a) in paragraph (a) of subsection (3), for the words “in the London, Edinburgh and Belfast Gazettes and, except where the court has otherwise directed, in two national newspapers” there were substituted the words “in two national newspapers in the

United Kingdom, and in such publications or in such manner in the member State of the commitment as the court has directed.”;

- (b) in paragraph (d) of that subsection, for the words “at offices in the United Kingdom of the companies concerned” there were substituted the words “at offices in the United Kingdom of the transferor company and at such place in the member State of the commitment as the court has directed”: and
- (c) for the provisions of subsections (6) to (6B) there were substituted the following provisions of this section.

(3) Where the establishment of the transferee company to which the policies are to be transferred is situated in the United Kingdom, the court shall not make an order sanctioning the scheme unless it is satisfied that—

- (a) the transferee company fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
- (b) the supervisory authorities of that member State agree to the transfer; and
- (c) the transferee company is, or immediately after the making of the order will be, authorised under section 3 or 4 above to carry on long term business of the class or classes to be transferred under the scheme.

(4) Where the establishment of the transferee company to which the policies are to be transferred is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless—

- (a) it is satisfied that the supervisory authorities of the member State where the establishment of the transferee company to which the policies are to be transferred is situated agree to the transfer; and
- (b) where the member State of the commitment is not the member State in which the establishment is situated, it is also satisfied that—
  - (i) the establishment fulfils the conditions in Articles 11, 12, 14 and 16 of the second long term insurance Directive in the member State of the commitment;
  - (ii) the law of that member State provides for the possibility of such a transfer; and
  - (iii) the supervisory authorities of that member State agree to the transfer.

(5) Where the head office of the transferee company is situated in a member State other than the United Kingdom, the court shall not make an order sanctioning the scheme unless the supervisory authorities of that member State certify that the transferee company possesses the necessary margin of solvency after taking the proposed transfer into account.

(6) Where the court makes an order sanctioning the scheme, it shall direct that—

- (a) notice of the making of any order, or the execution of any instrument, giving effect to the transfer shall be published in the member State of the commitment; and
- (b) the notice shall specify a period during which any policy holder affected may cancel the policy;

and such an instrument or order shall not bind such a policy holder if either such a notice is not so published or the policy holder cancels the policy during the period so specified.”

(4) In section 52A(1) (issue of certificates by Secretary of State)—

- (a) in subsection (1), for the words “general policies”, in both places where they occur, there shall be substituted the words “general or long term policies”; and

(b) in subsection (2), after the definition of “general policy” there shall be inserted the following definition–

“long term policy” means a policy evidencing a contract the effecting of which constitutes the carrying on of long term business, other than reinsurance.